

1 Next Friend MJ Blanchard
2 Phone #706-745-7201
petition on behalf of Walter Fitzpatrick III

3 **UNITED STATES DISTRICT COURT**
4 **EASTERN DISTRICT OF TENNESSEE**
5 **AT KNOXVILLE**

HABEAS PET
#1
FILED
JAN 30 2012
Clerk, U. S. District Court
Eastern District of Tennessee
At Knoxville

6 Ex Rel Through Next Friend
7 MJ Blanchard brings this petition on
behalf of a man unlawfully incarcerated
In STATE custody

Case No: 3:12-CV-48
Date: February ____, 2012
Time: 10:00 a.m.

8 Walter Fitzpatrick III
9 Petitioner as self in law
V

Three judge panel demanded for all
Constitutional issues

10 Respondent(s)
11 Monroe County Sheriff Bill Bivens
(Jailer/Custodian)

**PETITION FOR THE GREAT WRIT OF
HABEAS CORPUS
3 DAY ORDER TO SHOW CAUSE WHY
WRIT SHOULD NOT BE GRANTED**

12 V and
13 THE STATE OF TENNESSE et al
a corporate entity
alter ego of the BANK and the FUND
the real parties in interest
14 represented by Attorney General James H Stutts

**COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF**

supported by sworn affidavits
and Exhibit Evidence
PLEASE FILE ON DEMAND
Pursuant to US Constitution,
laws and treaties

25 28 U.S.C. § 2254 , §2243,
26 28 U.S.C. § 1361 (Mandamus)
27 28 U.S.C. § 1331 (federal question)

28 **3 DAY ORDER TO SHOW CAUSE**
Re: Habeas default by Tenn. Supreme Ct et al
re: cause # 11366

21 **PETITION FOR THE GREAT WRIT OF HABEAS CORPUS AND COMPLAINT On behalf**
22 **of Walter Fitzpatrick III AS PRESENTED BY AFFIDAVIT OF His "Next Friend" FOR**
23 **INJUNCTIVE AND DECLARATORY RELIEF WITH EMERGENCY ORDER TO SHOW**
24 **CAUSE WITHIN THREE DAYS PURSUANT TO 28 U.S.C §2241,et seq.**

25 1) Petitioner hereby petitions this court under 28 U.S.C § 241,et seq., to issue a writ of Habeas Corpus ordering
26 Petitioner's immediate release from custody of Monroe County Court and jail of Custodian warden jailer Sheriff
27 Bill Bivens et al . In the alternative Petitioner requests that the Court order Respondents to show cause within
28 Three days pursuant to 28 U.S.C §2243

26 **GROUND FOR EMERGENCY ORDER TO SHOW**
27 **CAUSE WITH A RETURN DATE OF THREE DAYS**

28 2) Petitioner requests that this court order Respondents to immediately show cause why relief requested in this
petition should not be granted. According to 28 U.S.C §2243

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LIST OF PETITIONER'S EVIDENCE EXHIBITS

Exhibits # 1-35 and A-D incorporated by reference

- Exhibit # 1 Original Habeas Corpus - Due Process claims
 - A. 23 September, 2011 Statement to the court
 - B. Habeas Corpus Memorandum in Law
 - C. US Grand Jury Institute investigative Report
 - D. Carroll Ross letter
- Exhibit # 2 Notice of Dishonor to issue writ
- Exhibit # 3 Entry of Default Judgment against respondents
- Exhibit # 4 Ombudsman letter from Michael Lerman re: dishonored habeas /demand to cure
- Exhibit # 5 Notary Presentment of Habeas and Ombudsman letter regarding dishonored petitioner's habeas submitted by next friend MJ Blanchard
- Exhibit # 6 Certificate of Mailing of Notary Presentment of Habeas and Ombudsman letter
- Exhibit # 7 Certified Mail Receipt of Notary Presentment of Habeas and Ombudsman letter
- Exhibit # 8 Letter re: Dishonored Ombudsman Notice/Demand to Cure Presented Under Seal
- Exhibit # 9 Notary Seal Certification 2930
- Exhibit # 10 Affidavit of Service 2930
- Exhibit # 11 Green card receipt for certified mail to Tennessee Supreme Court 2930
- Exhibit # 12 Affidavit from MJ Blanchard regarding incarceration conditions
- Exhibit # 13 Walter Fitzpatrick's Original Treason Complaint-re Obama
- Exhibit # 14 12 October 2009 FBI Criminal Complaint (pdf)
- Exhibit # 15 06 September 2011 criminal complaint re: OBAMA in TREASON
- Exhibit # 16 01 April 2010 Carroll L Ross Grand Jury Order of Instruction. Ignore federal crimes
- Exhibit # 17 01 December 2009 CHARGE to the Monroe County Tennessee Grand Jury
- Exhibit # 18 17 February 2010 SWORN CRIMINAL COMPLAINT AGAINST JUDGE UNDER CODE OF JUDICIAL CONDUCT
- Exhibit # 19 US Grand Jury institute Investigative Report -Exhibit # B
- Exhibit # 20 Agent Washington - Petitioner's complaint reported to FBI (pdf)
- Exhibit # 21 10 June 2010 ON DEMAND PUBLIC RECORDS REQUESTS
- Exhibit # 22 Filed Motion To Dismiss 7 July 2010
- Exhibit # 23 Medical Injury to Body to Walter Fitzpatrick III - injuries to head and ear
- Exhibit # 24 01 December 2009 CHARGE to the Monroe County Tennessee Grand Jury (pdf)
- Exhibit # 25 07 October 2009 Criminal Complaint Affidavit notarized on 8 October 2009 (Part I)
- Exhibit # 26 07 October 2009 Criminal Complaint Affidavit notarized on 8 October 2009(Part II)

1 Exhibit # 27 07 October 2009 Criminal Complaint Affidavit notarized on 8 October 2009
(Part III)
2 Exhibit # 28 08 October 2009-Account of meeting with General Sessions Court Judge
3 Exhibit # 29 08 March 2010 Notice of Necessity, Authority and Intent
4 Exhibit # 30 01 APRIL CITIZENS ARREST WARRANT
5 Exhibit # 31 01 APRIL AFFIDAVIT OF CRIMINAL COMPLAINT
6 Exhibit # 32 FILED Notice of Challenge 24 May 2010 Copy
7 Exhibit # 33 Affidavit of MJ "Zeb" Blanchard regarding Habeas Corpus - Monroe County
Court Oct 6, 2011 under cause file # 11366
8 Exhibit # 34 Affidavit of Michael Lerman the Republic Citizens Ombudsman – file #11366
9 Exhibit # 35 Photographs of damage to Walter Fitzpatrick's home

10 Petitioner reserves the right to amend and
11 expand this evidence exhibit as
12 needed.
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INTRODUCTORY STATEMENT

Question of Jurisdiction. Habeas Corpus stays all other proceedings. There is no other plain, speedy, or adequate remedy at law.

Proverbs 22: 8

*Those who plant injustice will harvest disaster
and their reign of terror will come to an end.*

A Malicious abuse of legal process occurs where the party employs it for some unlawful object, not the purpose which it is intended by the law to effect, in other words, a perversion of the law.

1. Comes now the Petitioner Ret. Lt. Commander Walter Fitzpatrick III by and through his Next Friend MJ Blanchard into the above entitled Federal Court of Record and files this Petition, an Application For Federal Habeas Corpus Relief, supported by sworn affidavits for a man unlawfully held in state custody under the circumstances of this case and causes of actions named herein. Laws , rules, regulations, statutes, and Supreme Court precedents regarding constitutional violations make it clear that the State of Tennessee is expressly prohibited from continuing applicants incarceration under federal law, under the doctrine of substantive due process , under the doctrines that prohibit cruel and unusual punishment, under the international convention prohibiting torture, under void for vagueness doctrine, under malicious prosecution doctrine, under the confrontation clause of the US Constitution at the Sixth Amendment ,under the law of torts regarding fraud and deceit and under perjury of oaths.

2. The very nature of the writ demands that it be administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected,” *Harris v. Nelson*, 394 U.S. 286 (1969).

3. Petitioner petitions this court through his Next Friend MJ Blanchard for a Writ of Habeas Corpus for release from unlawful imprisonment and restraint of liberty in accordance with Article I, Section 9 of the Constitution of the United States of America.

4. Petitioner, a retired naval officer, Lt. Commander Walter Fitzpatrick III is being unlawfully incarcerated under inhumane conditions in solitary confinement. He is being held in Cells #9 & #10, which he calls cement boxes that are kept cold, are damp and smell like raw sewerage. He has no running water, he has to ask permission for the guards to turn on water for the toilet to be flushed, is held for weeks at a time without being able to shower, and when

1 he is allowed to shower it is in an unheated enclosure subject to the freezing cold. He has been
2 denied warm clothing from the outside. The lights are kept on all the time so he has no sense of
3 night or day, an extremely loud fan is always running, filling the cells with a very loud noise
4 and a constant draft which interferes with his ability to sleep causing sleep deprivation and may
5 be injurious to his hearing. He has been denied adequate medical care for his diabetic medical
6 condition. Certainly not a humane facility for anyone at any time

7 5. Petitioner makes this application under Article III jurisdiction of the Constitution
8 itself for subject matter jurisdiction and the First, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth,
9 Tenth, Eleventh Amendments and the equal protection clause.

10 6. In this case, there is no other plain, speedy, or adequate remedy at law, and there is
11 no interest of the people served by continuing the appellant's incarceration in clear violation of
12 the Tennessee State and the federal Constitutions as well as the International law of nations.

13 7. The issuance of this writ is a lawful right maintained where all Constitutional law
14 issues are heard as a matter of right and jurisdiction in this matter is by virtue of the
15 Constitution, the supreme law power of the land, which cannot be abrogated by law of the sea,
16 martial law, law merchant , or any statute or session law.

17 8. The Courts must ask the following question: "if the officers were doing only what
18 they were authorized to do under the Constitution, would they have come to a same result?"
19 The answer is definitively not.

20 I. JURISDICTION AND VENUE

21 9. Jurisdiction is also pursuant to 28 U.S.C. §§2243 for a three day order to show cause
22 why writ should not issue and a federal default judgment taken against respondents and 2254
23 (habeas corpus);regarding a man held in state custody. Also jurisdiction is pursuant to 1361 (A
24 Writ of Mandamus is at issue when Constitutional DEPRIVATION IS SO SEVERE THAT IT
25 CAN EFFECT THE LIFE AND HEALTH/ SAFETY OF THE MAN IT IS ISSUED TO
26 PROTECT), 1331 (federal question), 2201 et seq. (Declaratory Judgment Act) 8 U.S.C. §1503,
27 (denial of rights and privileges).

28 10. THERE IS NO REASON TO ASSUME THAT EVERY THING IS O.K.
IT IS NOT. A DECORATED, RETIRED NAVAL OFFICER IS BEING TORTURED
FOR EXPOSING A MASSIVE CRIME SYNDICATE RING RUNNING OUT OF MONROE
COUNTY COURT HOUSE.

11. AN ORDER TO SHOW CAUSE NEEDS TO BE JUDICALLY ENFORCED

1 WITHIN NO LONGER THAN THREE DAYS TO SHOW CAUSE WHY RESPONDENTS
2 IN MONROE COUNTY SHOULD NOT BE ORDERED TO RELEASE PETITIONER OR
3 WHY THEY SHOULD NOT BE HELD IN CONTEMPT UNDER MISPRISION OF A
4 FELONY UNDER TITLE 4 AND OTHER VIOLATIONS OF THE LAW ALLEDGED
5 HEREIN. EXIGENT CIRCUMSTANCES EXIST.

6 12. United States District Court is conditionally granted jurisdiction by this Court of
7 Record pursuant to 28 U.S.C. 2241 to address this exigent matter and has the power to grant a
8 Writ of Habeas Corpus "to a prisoner in custody in violation of the Constitution . . . of the
9 United States." The question in this case is whether a state prisoner who has been "in custody"
10 is within the meaning of this section so that a Federal District Court has jurisdiction to hear and
11 determine his charge that his state sentence was imposed in violation of the United States
12 Constitution and numerous other federal laws.

13 13. This civil action is also brought pursuant to 28 USC 1361(Petition for Writ of
14 Mandamus for the Court to move pursuant to 42 U.S.C. §1983 and 1985 for the following
15 grounds. Walter Fitzpatrick's health and safety are at issue as stated herein. Injunctive relief
16 and redress are needed from the deprivations and incarceration that are being levied against
17 Petitioner, a former Naval Officer, under color of state law, of rights secured by the United
18 States Constitution and treaties thereof.

19 14. The very essence of civil liberty consists in the right of every individual to claim the
20 protection of the laws, whenever he receives an injury. "One of the first duties of government
21 is to afford that protection..." MARBURY v MADISON, 5 US 137 (1803).

22 15. Jurisdiction is also warranted under the "miscarriage of justice" exception. United
23 States v. Young, 470 U.S. 1, 15 (1985); United States v. Frady, 456 U.S. 152, 163 n. 14 (1986);
24 United States v. Olano, 507 U.S. 725, 736 (1993).

25 16. The Court also has pendant jurisdiction over state claims pursuant to 28 USC
26 §1367. Petitioner Plaintiff does not waive any claim or rights arising through discovery, facts,
27 law, or by amendment to this Habeas and Complaint. Petitioner Plaintiff seeks injunctive relief
28 under 42 U.S.C §1983, as well as declaratory relief pursuant to 28 U.S.C. §2201 and 2202.

26 II. PARTIES

27 17. Petitioner, Retired Lt. Commander Walter Fitzpatrick III is the one who brings this
28 cause of action by and through his Next Friend, M.J "Zeb" Blanchard. Petitioner is and was at
all times mentioned herein, a respectful, honorable man of peace, a retired, commissioned
naval officer with all rights, recourses, redresses and rights of subrogation reserved who is

1 seeking immediate redress and remedy to the belligerent crimes committed against him and
2 injuries sustained as a matter of lawful right within the meaning of 42 U.S.C. §1983 and is an
3 injured, aggrieved party in this action.

4 18. Respondents, herein after referred to as Respondent , Defendant, Predicate RICO
5 actors, Monroe (County)/(State of) Tennessee Court Syndicate or MTCS operate a private for
6 profit enterprise, administer the Court business for the Corporate STATE OF TENNESSE in
7 Monroe County, Tennessee, collect fines and fees and operate the jails and prisons as
8 determined by its Operations Officials.

9 19. The Monroe Tennessee Court Syndicate is being sued for relief collectively (both)
10 in their official and individual capacities. By discovery, Petitioner /plaintiff will allege the
11 "Officials", respondents and all it DOES that are indentified hereinafter.

12 20. Respondent Defendant Predicate RICO actor, Attorney General Stutt is the
13 Executive Officer of the Monroe /Tennessee Court Syndicate and is responsible for the overall
14 legal operations of said Monroe /Tennessee Court Syndicate. Respondent Defendant Stutt is
15 being sued collectively (both) in his official and individual capacity (ies) for relief from RICO
16 crimes, breach of oath and violations of the Constitution which resulted in criminal law
17 violations and deprivations which in turn resulted in physical harm, abusive and unlawful
18 imprisonments, assault and battery, burglary, and aiding and abetting torture against the
19 petitioner, a federal whistleblower.

20 21. Respondent Predicate RICO actor Judge/magistrate Carroll Ross is a corporate
21 official for a State agency subject to the APA who makes adjudications regarding matters of
22 administrative law before the county arguing Monroe/Tennessee Court Syndicate's position.
23 Respondent Carroll Ross' actions as a sitting judge need to be reviewed. Mr. Ross is being
24 sued collectively (both) in his official and individual capacity(ies) for relief from RICO crimes,
25 breach of oath and violations of the Constitution which resulted in criminal law violations and
26 deprivations which in turn resulted in physical harm , abusive and unlawful imprisonments,
27 assault and battery, burglary, and aiding and abetting torture against the petitioner, a federal
28 whistleblower.

29 22. Respondent Defendant Sherriff Bill Bivens is an Executive Branch officer of the
30 Monroe /Tennessee Court Syndicate and is responsible for the Sherriff's Department providing
31 security operations for said Monroe /Tennessee Court. Respondent Bill Bivens is the
32 Custodian of the jail having physical custody of Petitioner Walter Fitzpatrick III. Respondent/
33 Defendant Bill Bivens' actions need to be judicially reviewed. Mr. Bivens is being sued

collectively (both) in his official and individual capacity(ies) for relief from RICO crimes, breach of oath and violations of the Constitution which resulted in criminal law violations and deprivations which in turn resulted in physical harm, abusive and unlawful imprisonments, assault and battery, burglary, and aiding and abetting torture against the petitioner, a federal whistleblower.

23. Respondent/Predicate RICO actor(s)/ Defendants, Monroe County Judges : Donald Paul Harris, J. Reed Dixon, Jon Kerry Blackwood , Amy Armstrong Reedy, Chief Justice Janice Holder, Assistant Attorney General Steve Bebb, and his assistants Steve Morgan, Mike Morgan, Chris Morgan and Officers Pat Wilson, Trent Prock, Captain Darron Bivens, Sheriff's Deputy Bennie Byrum, Officer Sergeant Billingworth, Officer Jim Kile, Madisonville Police Chief Gregg Breeden, Clerks Karen Wilburn, Martha Cook, and Grand Juror Foreman Faye Tennyson, Grand Juror Foreman Angela Davis, and Grand Juror Foreman Gary Pettway are the Officers of the Monroe /Tennessee Court Syndicate and are responsible for operations of said Monroe/Tennessee Court Syndicate.

24. The actions of Respondent/ Defendants named herein need to be judicially reviewed. All the named Respondent/ Defendants are being sued collectively (both) in both there Official and Individual capacity (ies) for relief from RICO crimes, breach of oath and violations of the Constitution which resulted in criminal law violations and deprivations which in turn resulted in physical harm, abusive and unlawful imprisonments, assault and battery, burglary, and aiding and abetting torture against the petitioner; a federal whistleblower.

Background:

25. This action arises from the Respondent(s) practices, acts, training and/or policies, which violate the US Constitution and which have caused the Petitioner to be wrongly, unlawfully and falsely imprisoned, placed into inhumane incarceration conditions, and otherwise deprived of his constitutional protections as outlined herein. See Trezevant v. City of Tampa 741 F2d 336 regarding damages assessed for constitutional depravations (1.6 million a day against each respondent for each day.)

**III. BRIEF SUMMARY STATEMENT AS TO WHY RELIEF SHOULD
BE GRANTED AND PETITIONER IN STATE CUSTODY RELEASED**

26. Attorney General Stutts comes under the definition of "Foreign Agent" under 2 USC 611. Attorney General Stutts committed fraud on the court when he proceeded forward in the case against the Petitioner, based on the use of jurisdictionally deficient charging

1 instruments due to fraud and due to a conflict of interest. Petitioner had previously sworn out
2 an arrest warrant against Stutts stating that his proceeding was obstruction and fraud see 18
3 USC 1001 , Title 42 U.S.C. 1985, (1) Conspiracy, Civil Rights, (2) Obstructing Justice,
4 Intimidation, Collusion. (3) Deprivation of Rights or Privileges, Racketeering and Title 18
5 U.S.C. 242, Deprivation of Rights under Color of Law, and Title 42 U.S.C. 1983, Personal
6 injury occurs when U.S. Constitutional Rights are violated when commencing a lawfully
7 deficient criminal prosecution in the name of a corporate state against the Petitioner, which was
8 prohibited by the 11th Amendment from proceeding without all constitutional standing and
9 prerequisites for procedural and substantive due process not being met.

10 27. Petitioner was denied his rights as stated in the Sixth Amendment when he was not
11 allowed to discover the true nature and cause of the proceeding. There was an appearance of
12 retaliation against the Petitioner for the Petitioner having sworn out arrest warrants against
13 Respondents of the Monroe County Courts for frauds and torts previously exposed. (Refer to
14 Exhibits "14" and "16".) Petitioner was not allowed to challenge the legal competency of the
15 jurors, particularly the Jury Foreman due to state term limits because Monroe County judges
16 ordered the jury to ignore the Petitioner's sworn complaints of federal crimes committed by
17 respondents (Refer to Exhibits #22 and #23). This created an appearance of bias and prejudice.
18 These proceedings resulted in Petitioner being denied his Fifth and Seventh Amendment right
19 to protection of a Court of Record and due process of law; to a trial by an unbiased and
20 constitutionally fit jury and equal protection under the laws of the Fifth Amendment as it
21 applies to the corporate Federal New States post reconstruction acts under the Fourteenth
22 Amendment and federal law against RICO violations.

23 28. The proceeding which resulted in Petitioner's incarceration was jurisdictionally and
24 morally defective in form and substance, a violation of federal and state law for dishonest
25 government services and upon judicial review, the Federal Court will find that the State Court
26 actors were acting in want of jurisdiction outside their court's constitutional boundaries.
27 Further it is only proper that the State Court be ordered to vacate and void it's judgments and
28 sentences against the Petitioner for being void on their face for fraud and for irregular on their
face process, a violation of the Constitution's protection of rights in law under state and federal
laws and for denying the Petitioner equal protection under the law and his rights, privileges and
immunities. The Federal Court will find that the State Court should be ordered to release
Walter Fitzpatrick immediately as he is being held there unlawfully in violation of federal and
international law and treaties.

29. Reference: California Code of Civil Procedure 1916 which is constitutionally applicable to Tennessee, "Any judicial record may be impeached by evidence of a want of jurisdiction in the court or judicial officer, of collusion between the parties, or of fraud in the party offering the record, in respect to the proceedings."

- The merits of the factual dispute were not resolved in any state court hearing see (28 USC 2254(d)(1). Amendment Art IV) see claims for relief
 - The fact finding procedure employed by the State Court was not adequate to afford a full and fair hearing (28 USC 2254(d)(2). Amendment Art V and Amendment Art XIV) see claims for relief
 - The state court lacked jurisdiction over Petitioner in the State Court hearing (i.e. no injured party free from fraud on the court was ever produced, and petitioner was never properly within the court's jurisdiction) (28 USC 2254(d)(4)). Amendment art VI) see claims for relief
 - Petitioner did not receive a full, fair, and adequate hearing in any state court proceeding (28 USC 2254(d)(6)., Amendment Art V) see claims for relief
 - Petitioner was denied due process of law, appellate review, right of allocution and a Habeas Corpus judicial review de novo in the State Court proceeding (28 USC 2254(d)(7) Amendment Art V) see claims for relief
- "The doctrine of res judicata is inapplicable to void judgments. 'Obviously a judgment, though final and on the merits, has no binding force and is subject to collateral attack if it is wholly void for lack of jurisdiction of the subject matter or person, and perhaps for excess of jurisdiction or where it is obtained by extrinsic fraud.'" *Rochin v. Pat Johnson Manufacturing Co.*, (1998) 67 Cal. App. 4th 1228, 1239.

Expanded background history why writ should issue and petitioner should be released to pursue prosecution of corrupt State Predicate actors for RICO and other criminal violations

30. Respondents acted in a RICO wheel type conspiracy to violate whistleblower Petitioner's constitutionally guaranteed rights to "due process in law, in practice, in procedure and in policy." Said Respondents /Defendants have repeatedly violated Petitioner, Ret. Lt. Commander Walter Fitzpatrick's Constitutional access to equal protection under the law of those rights as established by Congress, the Tennessee Legislature and the Supreme Court of the United States.

1 31. Respondents have engaged in multiple fraudulent and malfeasant criminal conducts
2 which violated the Petitioner's constitutionally protected rights at the Fifth Amendment where
3 it says no person shall be deprived of life, liberty or property without due process of law. The
4 right to due process and Petitioner's First Amendment constitutionally protected right to
5 freedom of speech to seek redress to his grievance have been violated by keeping him in
6 solitary confinement under inhumane conditions (refer to number 4. in Introductory Statement
of this document , pages 4,5).

7 32. In addition to the basic conditions of his cell as described above (refer to number 4.
8 in Introductory Statement of this document, pages 4,5), the Petitioner has not been granted
9 access to a law library or computer, preventing him from making his own petition to redress his
10 grievances and injuries and thus he requested his Next Friend to act as his agent to produce and
11 deliver this petition for the great writ to the Court to seek his release and to redress these
12 horrific crimes that has been levied against him apparently for challenging the Grand Jury,
13 judges and the law enforcement of Monroe County to obey their oaths to the Constitution and
do the right thing.

14 33. Petitioner, because of his forced incapacity, is unable to do this habeas for himself
15 and has had his Next Friend enter this habeas petition to help Petitioner to redress this horrific
16 miscarriage of justice, unlawful incarceration and abuse of state powers. His immediate release
17 is demanded by this Court of Record.

18 34. The original actions submitted by the Petitioner were submitted out of love for our
19 country by a man who has given a life of dedicated, humble, faithful and thankless service for
20 the defense of our nation, regardless of any risks to his own personal safety, serving as a Naval
21 officer . Walter Fitzpatrick III cares deeply about America's future and has endured this
22 hardship because he feels that the America we grew up with is in serious trouble. He has taken
23 upon himself the task of attempting to stop the treason in Washington, DC that is allowing the
24 looting of our rights and ultimately our country but has been brought up short by the corruption
within his own home state.

25 26 **IV. FACTS**

27 35. MJ "Zeb" Blanchard herein also called affiant and Next Friend of Petitioner Walter
28 Fitzpatrick III comes into the Court of Record before the Clerk of the Court in Federal District
Court, Eastern District of Tennessee entering lawful Notice of Default into the evidence record
of this case (see supporting Exhibits "1", "2" and "3") regarding an original Habeas Corpus

1 wherein Respondents failed to answer said claims of constitutional and criminal violations
2 which were advanced and fell silent. (Unclean Hands occurred.) Subsequent notice of non
3 response with a demand to cure was also met with silence (Estoppel occurred.) Notice for entry
4 of default occurred when respondents again failed to make an answer and vacate void
5 judgment and honor the Court of Record's demand to release Petitioner from unlawful custody.
(Laches occurred.)

6 36. Petitioner's Exhibits "1" - "3" and "A" - "C" are documentary evidence to this
7 effect and were previously filed in Tennessee State on Petitioner's behalf under Cause # 11366
8 regarding his unlawful imprisonment which was the result of the Monroe County General
9 Sessions court's of nul tiel record or court not of record in Inc Case No. 11-018 using fruit of
10 poisonous tree evidence that was derived from Inc Case No. 10-213, an apparently retaliatory
11 and malicious proceeding made up of false charges in retaliation for Petitioner's seeking the
12 arrest of Predicate RICO actor and tortfeasor Gary Pettway and other officers.

13 37. The original Writ for Habeas Corpus was submitted on October 6, 2011 and has
14 been officially obstructed, ignored and dishonored.

15 38. See Petitioner's supporting evidence in Exhibit "D", Exhibit "3", Exhibit "8" and
16 Exhibit "9" previously placed into the evidence record regarding the Monroe County Court for
17 and on the record on behalf of Walter Fitzpatrick III concerning respondents/ Predicate RICO
18 actors Bill Bivens et al, Chief Justice Janet Holder and the STATE OF TENNESSE et al by
19 Affiant, the Next Friend MJ Blanchard, and by the California Notary Presenter and the
20 Republic Citizens' Ombudsman, with supporting affidavits. Petitioner's evidence regarding
21 additional evidence of default recorded by a neutral, competent, fact witnesses entered under
22 Exhibits "4" - "11" on behalf of Walter Fitzpatrick III who was unable to enter into the above
entitled Court of Record without help from his next friend due to his incarceration.

23 39. Petitioner has authorized his Next Friend, MJ "Zeb" Blanchard, to bring this
24 petition matter into the above entitled Federal Court of Record to access this Federal Court of
25 Record and 3 Judge Panel and as such, Mr. Blanchard has lawful standing as his express agent
26 as Petitioner is in continued, possible danger of sustaining a direct injury while in
incarceration. See " Ex parte Levitt, 302 U.S. 633, 634 (1937).

27 40. The Respondents from the Monroe County Court, operating under color of law,
28 knowingly and willfully, with intent, have violated the Constitution and Federal laws against
torture and are now holding the Petitioner hostage under an act of piracy on the land,
kidnapping and breach of the peace. His captors have engaged in tricks and schemes, dishonest

1 services fraud for perjury, subordination of perjury of their constitutional oaths, and subjecting
2 Petitioner to repeated retaliatory and abusive legal proceedings and trials.

3 41. Lawful evidence is supported by un rebutted sworn affidavits of the Next Friend. a)
4 Non Rebutted Affidavits are "Prima Facie Evidence in the Case, "United States vs. Kis, 658
5 F.2d, 526, 536-337 (7th Cir. 1981);

6 b) Cert Denied, 50 U.S. L.W. 2169; S.Ct. March 22, 1982. "Indeed, no more than (Affidavits)
7 is necessary to make the Prima Facie Case."

8 c) Seitzer v. Seitzer, 80 Cal. Rptr. 688 "Uncontested Affidavit taken as true in support of
9 Summary Judgment."

10 Official presentment documents from the California Notary Public Acceptor's Office and the
11 Republic Citizen's Ombudsman's Office, a private party constitutional rights advocate and
12 fraud fighter, were presented under notary seal to the Respondents by submission into the court
13 first by personal service of MJ "Zeb" Blanchard. These documents, including the original Writ
14 of Habeas Corpus were issued a case file Cause number of 11366 and submitted into State
15 Court in Monroe County and were sealed by the court stamp as ministerial act and evidence of
16 their receipt of the original habeas document.

17 42. When a hearing was not held by the Monroe County Court to hear the Petitioner's
18 Original Habeas Corpus was again not held within 3 days time, a second presentment was sent
19 from the Ombudsman and Notary, under notary seal, by official certified mail with return
20 receipt on October 12, 2011. This was a Notice of Non Response/Dishonor concerning the
21 failure of the court to answer the Habeas Corpus and offering them another opportunity to cure
22 the dishonor. On October 17, 2011 a Notice of Default Judgment was filed with the Clerk of
23 the Court in the Monroe County Court in response to a Petitioner's a hearing for Writ of
24 Habeas Corpus not yet occurring and the letter from Judge Carroll Ross stating that all writs of
25 habeas corpus were being directed to the State Attorney General (refer to Exhibit "D" and
26 Exhibit "3"). On October 25, 2011 the Ombudsman and Notary, under notary seal, by official
27 certified mail with return receipt sent a certified copy of the original Writ of Habeas Corpus
28 and a Notice of Default and Opportunity to Cure to the Tennessee Supreme Court. Said notice
of default was given under the Notary and Ombudsman seal by certified mail when
Respondents named on the habeas corpus petition under Cause # 11366, came under lawful
examination by way of the original habeas petition process by the Court of Record and three
witnesses investigating the constitutional questions of deprivations and subject matter
jurisdiction, violations of procedural and substantive due process, legality of proceedings with

1 unqualified, compromised, incompetent grand jury foreman, and constitutional lawfulness
2 absent Fifth Amendment and federal law protections of due process of the state proceeding in
3 question against Retired Naval officer and whistleblower Lt. Commander Walter Fitzpatrick
4 III. This default with notice and opportunity to cure was not responded to by the Tennessee
5 Supreme Court. On November 8, 2011 a Notice of Protest re Default/Dishonor regarding the
6 Notary Presentment under seal by Ombudsman was sent by the Ombudsman and Notary, under
7 notary seal, by official certified mail with return receipt in response to the Tennessee Supreme
8 Court's non response to the Petitioner (Refer to Exhibits "4" – "11").

9 43. Respondent Corporate STATE predicate actors fall under the definition of an
10 administrative agency under the APA .When these various State Court Respondents fell silent
11 and dishonored the Original Writ of Habeas Corpus four times, up to the level of the Supreme
12 Court of Tennessee. They exhibited evidence of denial of due process and loss of jurisdiction.

13 44. They failed to make an official answer before an agent of the California Secretary
14 of State, a notary officer, regarding the question of jurisdictional, due process and
15 constitutional violations and defects resulting in the abusive incarceration of Petitioner Walter
16 Fitzpatrick III.

17 45. Reasonable time was given for the predicate actors/Respondents in the "STATE",
18 "US Vessels" and agents for "US inc" and its political subdivision municipality corporations,
19 an agency under the APA, to open up a Court of Record to redress and cure the alleged
20 criminal conduct. They failed to do so thereby admitting by their silence the crimes committed
21 under color of law against Ret. Lt. Commander Walter Fitzpatrick III including but not limited
22 to crimes of fraud, RICO conspiracy, Hobbs Act violations, assault and battery and obstruction
23 of a retired naval officer's pursuit of a national security investigation against Domestic
24 Enemies who are subversives actively engaged in hostile acts but possible acts of treason as
25 well.

26 46. Each Respondent has knowingly stipulated, without protest or objection, to being
27 held willful in the breach of their oaths and fiduciary duties and have stipulated to the claims of
28 constitutional violations, jurisdictional defects and crimes as well as all other claims made on
the original habeas which are incorporated by reference herein to this expanded Federal
Habeas. Said Respondents were mandated by constitutional, federal and state law to vacate as
void the sentence and action against Walter Fitzpatrick III immediately. They did not therefore
latches has occurred. They are in estoppel and barred from asserting any further claims. State
administrative remedies to move the Respondents to resolve and cure this matter

1 administratively in house have now been exhausted. Federal action is now constitutionally and
2 judicially mandated Under Article III .

3 See: *U.S v Tweel* 550 F2d.297. *"Silence can only be equated where there is a legal and moral*
4 *duty to speak or when an inquiry left unanswered would be intentionally misleading."* *We*
5 *cannot condone this shocking conduct ... If that is the case we hope our message is clear, this*
6 *sort of deception will not be tolerated and if this routine it should be corrected immediately.*

7 **47. Justice delayed is justice denied.** Notice of Title 4, misprision of felony, was
8 given to all Respondents by the Ombudsman notice of Michael Lerman when they failed to
9 cure by the first principle of due process, i.e., notice. Notice to agent is notice to principal and
10 notice to principal is notice to agent. Upon Respondents' failure to answer Petitioner's habeas
11 claims made under official notorial presentment (see Exhibit "4") and their failure to stop their
12 unlawful willful assault and criminal trespass behavior, abusive incarcerations and assaults
13 against Walter Fitzpatrick III immediately, Federal enforcement of the law is now required
14 against all Predicate Rico actors under the RICO and Hobbs act and all other appropriate anti-
15 corruption measures.

16 **48.** Respondent officers are public officers. They are deemed to know and are required,
17 as conditions of their employment and for receiving taxpayer funds, to uphold the Constitution,
18 both State and National and to be accountable to the rule of law and the law of the land as a
19 condition of their receiving a paycheck. They have taken a fidelity Oath to support and defend
20 the US and Tennessee State Constitutions and statues enacted by the legislature that don't
21 come into conflict thereof and demand is now at issue to produce said Oaths before the federal
22 Court of Record.

23 **49.** Respondent officers only hold their offices for as long as they hold their office in
24 good behavior i.e., absent criminal conduct and moral turpitude. Article III Sec 1 cl 2 and
25 Article VI cl 3. Since these positions hold power over a man's liberty, property as well as
26 safety this power is granted with express, precise, constitutional limitations on them.

27 **50.** This criminal conduct by the Respondent parties is now being reported through this
28 Federal Habeas Corpus and compliant to the nearest Federal Judge under Title 4 in this petition
and it is clearly the duty and lawful obligation of the Federal Judge in this matter to uphold his
constitutional duty and oath, a condition of his employment, and take serious judicial notice of
these claims and criminal complaints and act accordingly, pursuant to your lawful duty.
Petitioner Walter Fitzpatrick is in danger and he is sustaining injury daily. If you fail to act
very terrible consequences to him may result.

1 51. This court action is required to stop this breach of the peace and horrific
2 miscarriage of justice for reasons cited herein. Grant the Writ of Habeas Corpus. Have the
3 Custodian bring the Petitioner into this Federal Court to test the lawfulness of the detention of
4 the Petitioner and if found that as the petitioner asserts, through this habeas action brought by
5 his Next Friend that he is being unlawfully detained and injured by their constitutionally
6 prohibited conduct, secure his release immediately. Order his sentence vacated via Federal
7 Court Order and order the US Attorney to assist Petitioner Walter Fitzpatrick in bringing his
8 RICO claims before the Federal Grand Jury to remove these tortfeasor, predicate actors from
public office before more people get harmed or possibly killed.

9 52. Whistleblower and political prisoner Walter Fitzpatrick III has suffered multiple
10 violent assaults, injuries, trespasses and battery by Sheriff's deputies as well as burglary of his
11 home under color of law, some requiring medical treatment. (Refer to Exhibits "23" and "35")
12 Mr. Fitzpatrick had to have an ear treated medically that was almost torn off, has suffered
13 multiple tazerings, has had the door to his house broken down, his house trashed, and his
14 computers and personal belongings seized. The Respondents have engaged in a pattern of
15 protracted harassment and engaged in abusive litigation and prosecutorial abuse by Judges, the
16 Attorney General and sheriff's deputies who had him arrested and his liberty and person
17 violently assaulted on more than one occasion. (Refer to Exhibits "18", "20", "25" – "27",
18 "30", "31") Respondents leveled false and foundationless, third party hearsay illegal
19 allegations that purposely obstructed Petitioner's citizen's arrest of criminals which is a felony
20 breach of impoundment and rescue of criminals (Title 18 Chapter 73 Sec 1512 Obstruction Of
21 Justice). Petitioner was first arrested on April 1, 2010 and then several times thereafter up to
22 his current incarceration and is imprisoned based on foundationless, retaliatory charges
stemming from fruit of a poisonous tree evidence from prior proceedings based on fictitious
trumped up charges of riot, disorderly conduct and disrupting a lawful assembly.

23 53. Monroe County Sheriffs and Police Departments, the Tennessee Bureau of
24 Investigation, the Governor's Office and now the Tennessee Supreme Court's Office stand all
25 complicit by their inactions to correct wrongful behaviors of said predicate actors after being
26 repeatedly noticed.

27 54. These predicate actors who have shown malicious intent are rogue criminal thugs
28 who have been caught red handed perpetrating a huge fraud and felony crime ring involving
jury rigging and RICO racketeering employing kidnapping, assault, and possibly murder.

1 A racketeering crime syndicate operating from within the Monroe County Jail and Court House
2 routinely denies due process of law to their intended victims. Suspicions have been voiced that
3 this group may possibly be involved in and or possibly even responsible for covering up the
4 murder of whistleblower Jim Miller who was found shot in the back of the head in July 2010
5 and set on fire to silence his efforts to blow the whistle on this criminal syndicate being run in
6 Monroe and surrounding counties.

7 55. These people need to be immediately removed from office pending a full federal
8 criminal investigation and, as appropriate, arrested by Federal marshals.

9 56. This matter has been previously brought before the FBI, TBI , Highway Patrol and
10 their Judicial and Legislative State Oversight Commissions. Their overwhelming failure to
11 investigate when overwhelming evidence was presented before them of criminal conduct and
12 wrongdoing by predicate actors warrants a full scale federal RICO investigation by the Federal
13 Grand Jury, and a special prosecutor. Said predicate actors are in breach of the peace and
14 represent a clear and present danger to Walter Fitzpatrick III's health and safety and present a
15 great harm to their community if their crime ring is not immediately brought to an end.

16 57. These Respondent/Predicate actors operating under color of authority who are
17 armed become extremely dangerous criminals. Dirty law enforcement officials with badges
18 require a federal Judge and a Flag rank JAG officer to immediately intervene and to investigate
19 violations that they have been reported to have committed under the following provisions 42
20 U.S.C. § 1985, 42 U.S.C. § 1986, 18 U.S.C. § 4, 18 U.S.C. § 3, 18 U.S.C. § 1505, 18 U.S.C. § 2, 18
21 U.S.C. § 1, 18 U.S.C. § 1513, 18 U.S.C. § 2382, 18 U.S.C. § 1621 18 U.S.C. § 1964(a) & (c) 18
22 U.S.C. § 1968, 18 U.S.C. § 1341, 18 U.S.C. § 1001, 18 USC § 1346, USC 18 § 242, U.S. Const.
23 Art. III § 3, U.S. Const. Art VI cl 3.

24 58. Petitioner, Affiant and witnesses have first hand knowledge and documentary and
25 other massive, compelling evidence, including video and audio, that support Petitioner's RICO
26 claims that the people named herein the criminal complaint portion of this Great Writ are
27 predicate actor criminals who need to have their criminal operations shut down and their bonds
28 to do business immediately seized by this federal court until a full and thorough investigation
by a federal Grand Jury and a Special Prosecutor with investigative and enforcement powers
can get to the bottom of the fraud.

59. These Respondents /Predicate actors are running an organized, tightly managed
crime ring out of the Monroe County Court House and Sheriff's Office. They pose a clear and
present danger to the community at large for breach of the peace. Their criminal operations

1 need to be arrested and shut down immediately by Federal court order. All respondents need to
2 be immediately placed under arrest and or on administrative leave until this matter can be fully
3 examined by a Special Grand Jury, with witnesses called. Their hazard bonding to do business
4 should be arrested and seized in rem until they can make an offer of proof that they have not
5 violated the law against Walter Fitzpatrick III and others and the people of Tennessee State and
6 the United States when they obstructed. (Refer to Petitioner's Exhibits "24"- "28") These
7 Exhibits detail the Petitioner's investigation of these criminals and traitors and how they
8 obstructed a an attempted citizen's arrest (Refer to Petitioner's Exhibits "29" – "31") of
9 tortfeasor Gary Pettway, a jury foreman who has unlawfully exceeded his right to sit as
10 foreman for 27 years, a crime of felony jury rigging. The federal Judge needs to immediately
11 issue a 3 day order to show cause habeas writ and hear Petitioner Walter Fitzpatrick III's side
12 of this Claim.

12 60. These Respondents also willfully obstructed the pursuit of a national security
13 investigation by a highly competent and dedicated retired naval officer who has learned of
14 domestic enemy operatives who are actively engaged in the covert and overt acts of war and
15 treason against our national defense infrastructure, and deterrent forces.

15 61. It cannot be stressed enough that it is of the highest urgency for our National
16 Security to free Walter Fitzpatrick III before these subversives launch their war and assist him
17 in expeditiously finishing his national security investigation so the covert evil doers can be
18 publically identified and brought to justice before their war plans mature.

19 62. Ret. Lt. Commander Walter Fitzpatrick III will require federal whistleblower
20 protection and a change of venue for security reasons because the local criminals he is
21 exposing are clearly very dangerous and have threatened to murder him and others blowing the
22 whistle. They have already made good on their threats of physical violence against him, by
23 having him assaulted by local officials and his home burglarized and ransacked and made good
24 on legal abuse threats by abusive litigation, bearing false witness against him, piling up
25 trumped up foundationless charges, and subordinated and perjured their oaths.

25 63. Whistleblower Walter Fitzpatrick III needs a court order from this Federal Court
26 demanding that Respondents immediately bring into this Federal Court of Record all
27 documents, computers, media, notebooks and other private property seized by these criminal
28 predicate actors acting under a color of law.

64. Petitioner needs a restraining order against all Respondent officials to stand down
against him immediately and release him. This is a matter of both personal and national

1 security. Our nation is threatening war with Iran. If that war breaks out, they have subversive
2 operatives hidden inside our national security infrastructure controlling key areas of our
3 defensive response capabilities which they may impair when it is needed the most.

4 **V. ADDITIONAL BACKGROUND FACTS**

5 65. Lt. Commander Walter Fitzpatrick III is a retired naval Officer most recently
6 residing in Sweetwater, Tennessee. It came to his attention that elements of an immensely
7 powerful, hidden domestic enemy installed, through their money and power connections, a
8 man who is not qualified to be president - Barack Hussein Obama. Lt. Commander Fitzpatrick
9 found evidence of the use of forgery, false birth identification documents, false and untrue
10 DNC certifications, fraudulent use of multiple Social Security Numbers as identification,
11 deception as to his background birth, education and travel history. Further, Mr. Obama has
12 apparent ties to a number of stated Communists and may be a Communist himself. See Pastor
13 Manning and The Harlem Grand Jury Treason Trial findings (certified documents to be added
14 to and incorporated into the record at a later time).

15 66. There is an evident RICO conspiracy by high ranking government officials and the
16 national press who refuse to investigate Barack Hussein Obama aka Barry Soetoro aka Bari
17 Shabazz's past history even when competent facts supported by evidence were presented under
18 seal that he use multiple frauds to obtain the position of President and Commander and Chief
19 of America's Armed Forces.

20 67. Here are a few links to forensically provable evidence of moral turpitude and the
21 frauds to date:

22 * Stolen Social Security # (www.TinyURL.com/3zgrv7g)

23 * Forged Birth Certificate (www.TinyURL.com/3uwaubt)

24 * Not a lawful Commander in Chief (www.TinyURL.com/3qaleam)

25 * Forged Selective Service Registration (www.TinyURL.com/ml3qm5)

26 * Election Fraud by Nancy Pelosi /DNC (www.TinyURL.com/3186jgd)

27 * Usurpation of POTUS – not natural born (www.TinyURL.com/3efjkc3)

28 36-thousand-pounds-of-weapons-grade-uranium-and-plutonium is missing

See <http://exopermaculture.com/2011/09/18/missing-36-thousand-pounds-of-weapons-grade-uranium-and-plutonium/>

Arms being smuggled into at our southern border

see <http://in.reuters.com/article/2011/09/14/idINIndia-59348720110914>

1 Project Gunrunner and Operation Fast and Furious

2 <http://www.humanevents.com/article.php?id=46457>

3 [http://endoftheamericandream.com/archives/lets-arm-the-mexican-drug-cartels-with-](http://endoftheamericandream.com/archives/lets-arm-the-mexican-drug-cartels-with-thousands-of-guns-and-continue-to-leave-the-border-completely-wide-open)
4 [thousands-of-guns-and-continue-to-leave-the-border-completely-wide-open](http://endoftheamericandream.com/archives/lets-arm-the-mexican-drug-cartels-with-thousands-of-guns-and-continue-to-leave-the-border-completely-wide-open)

5 Chinese looking to build self sustaining city in Idaho

6 <http://www.moneyteachers.org/Idaho+Communist+Invasion.htm>

7 There is much more evidence pointing to things that are much bigger which are currently
8 happening. Petitioner Walter Fitzpatrick III needs to be released at once so he can finish his
9 national security investigation before their war plans mature.

10 68. After Barack Obama obtained office of President of the United States, he then
11 started to exhibit abhorrent, felony criminal behavior. See the following for complaints about
12 these behaviors - <http://www.theobamafile.com/ObamaLawsuits.htm> . Over one thousand
13 lawsuits against him have been unlawfully blocked. Also see the information on the Harlem
14 treason trial - [http://www.scribd.com/doc/42350785/CIA-COLUMBIA-OBAMA-Sedition-](http://www.scribd.com/doc/42350785/CIA-COLUMBIA-OBAMA-Sedition-and-Treason-TRIAL-PRESS-RELEASE-27Oct2010)
15 [and-Treason-TRIAL-PRESS-RELEASE-27Oct2010](http://www.scribd.com/doc/42350785/CIA-COLUMBIA-OBAMA-Sedition-and-Treason-TRIAL-PRESS-RELEASE-27Oct2010) Petitioner's latest compliant can be
16 viewed at-

17 [http://tpartyus2010.ning.com/profiles/blog/show?id=3180617%3ABlogPost%3A130004&com-](http://tpartyus2010.ning.com/profiles/blog/show?id=3180617%3ABlogPost%3A130004&commentId=3180617%3AComment%3A129443&xg_source=activity)
18 [mentId=3180617%3AComment%3A129443&xg_source=activity](http://tpartyus2010.ning.com/profiles/blog/show?id=3180617%3ABlogPost%3A130004&commentId=3180617%3AComment%3A129443&xg_source=activity) Barack Obama exercised
19 destructive executive war powers which were expressly, constitutionally prohibited both
20 domestically and internationally. See Bill of Impeachment drafted by a prominent
21 constitutional lawyer at -

22 http://www.politico.com/static/PPM186_articlesofimpeachment_040611.html

23 This and other evidence in his possession lead to Retired Lt. Commander Walter Fitzpatrick III
24 to issue a criminal complaint based on firsthand knowledge, facts, law, and evidence that
25 Obama and the subversives who installed him unlawfully have a criminal agenda.

26 69. Retired Lt. Commander Walter Fitzpatrick III has a lawful duty, even as a retired
27 naval officer, as he is still subject to recall to active duty to uphold his Oath to protect this
28 country. Taking this sacred duty in hand, the Petitioner, Lt. Commander Fitzpatrick attempted
to advance a criminal compliant through procedurally proper legal channels to the Federal
Grand Jury through the US Attorney at Knoxville. Refer to Exhibit "13 " or the electronic
version at <http://jaghunters.blogspot.com/2009/03/tuesday-17-march-2009-to-mr.html>

See updated Compliant as of Sept 2011 - Exhibit "15 ". The Petitioner, Lt. Commander
Fitzpatrick continued to advance his complaint for many months thereafter only to be met with

1 more and increasingly belligerent obstruction by the US Attorney, Judge Lambert , Judge
2 Carroll Ross, Attorney General Stutts and Grand Jury Foreman Pettway in Monroe County,
3 all tortfeasors, having a direct liability for Petitioners current abusive incarceration.

4 70. The Petitioner, Lt. Commander Fitzpatrick, realizing that the war dangers are
5 continuing to advance, attempted to circumvent the obstruction and bring this matter before his
6 local grand jury. However he was again met with obstruction when the alleged Jury Foreman
7 of the Grand Jury, predicate actor Gary Pettway, and predicate actor Attorney General Stutts
8 unlawfully obstructed by refusing to bring the matter before the rest of the Grand Jury.
9 Petitioner filed a criminal complaint for obstruction see Exhibits "14","17" and "18" to the
10 FBI and other law enforcement agencies in Tennessee. No one would act on it. It was after
11 some further investigation that it was discovered and made clear that Gary Pettway was
12 unlawfully sitting in the office of Grand Jury Foreman in excess of constitutionally permitted
13 statutory time and term limits.

14 71. Mr. Pettway has held the position of Foreman of the Monroe County Grand Jury for
15 27 years (Refer to Exhibit "19"). Statutory term limits call for one year and he must be picked
16 at random without human agency. This was not the case with Gary Pettway. He was selected
17 by a judge and held his seat without lawful appointing orders making him lawfully
18 incompetent to advance a criminal complaint against corrupt state officials if the need should
19 arise and the judge who selected him knowingly and with willful intent constructed this
20 unlawful backdoor defect.

21 72. Upon discovering this wrongful criminal conduct, the Petitioner, Retired Lt.
22 Commander Fitzpatrick, attempted 19 times to have Gary Pettway removed from office by
23 contacting various Tennessee law enforcement officials to purge the corrupt official infection
24 from his county seat of government. He was met with silence and obstruction for months. In
25 April of 2010 he notified law enforcement that if he found Gary Pettway attempting to foreman
26 the grand jury again in violation of Tennessee State law at (TCA 22-2-314) and federal law for
27 felony jury rigging, RICO, fraudulent concealment and dishonest services that he would make
28 a citizen's arrest. (Refer to Exhibit "20".) Petitioner gave repeated, advance notice. Repeated
criminal complaints going to the criminal misbehavior of Pettway's illicit jury were filed with
the Madisonville Police Department, the Sweetwater Police Department, the Tennessee Bureau
of Investigation, the Monroe County Sheriff's Department, the Governor, Lt. Governor, and
Attorney General for Tennessee State. The Federal Bureau of Investigation was notified.

1 73. A local Sessions Court judge was notified. National, Tennessee State and local
2 press were notified. There exists a flurry of public notifications and reports. Each member of
3 Tennessee's 106th legislature was placed on notice electronically and some by regular USPS
4 mail. A formal complaint was filed with Tennessee's Judiciary Court. The Chief Justice and all
5 four associate Justices of Tennessee's State Supreme Court were placed on notice.

6 74. Numerous county officials in McMinn and Monroe Counties were notified. Athens
7 Tennessee Police were notified (Athens is the county seat for McMinn County). The McMinn
8 County Sheriff was notified. (Attempts to file criminal complaints were deflected). Names,
9 dates, places and times are omitted here out of respect for your time and aspirin supply. Those
10 details are readily available.

11 75. On April 1, 2010 Petitioner observed Gary Pettway again attempting to convene the
12 Grand Jury for the 27th year in a row. He again asked Gary Pettway to remove himself because
13 he was unqualified to hold the people's office of Grand Jury Foreman (see TCA 22-2-314). Mr.
14 Pettway would not do so. Petitioner Retired Lt. Commander Walter Fitzpatrick III placed Mr.
15 Pettway under citizen's arrest, exercising his lawful right to do so.

16 76. When Petitioner Walter Fitzpatrick attempted to complete his citizen's arrest of Mr.
17 Gary Pettway, a tortfeasor, and deliver him with Petitioner's sworn compliant to the nearest
18 law enforcement officer to process his citizens' arrest, Petitioner was obstructed from
19 completing the arrest. A narrative by the Petitioner follows in blue explaining what happened
20 the day of this event. The event was recorded on video. (Captioned explanation in black text is
21 mine.)

22 77. Beginning about 0951 hours: The start of the video captures petitioner's arrival in
23 the Criminal Court Clerk's Office, then Mr. Pettway's arrest. Then the narrative proceeds to
24 narrate the following events. About 0956 -0957 hours: Sweetwater, TN Police Detective
25 Sergeant Bill Illingworth and other law enforcement officers move (petitioner and witnesses)
26 out of the Courtroom into the hallway.

27 78. About 0958 hours: Standing on the mid-level landing discussing our status. It's
28 confirmed once again amongst the group that the Madisonville Police have been summoned to
respond to assist in the Citizen's arrest of Gary Pettway. (they did not arrest Pettway and began
to move Petitioner out of the building therein obstructing Pettway's arrest. A felony crime
called pound breach and recue had just been committed helping the tortfeasor escape arrest.)

 79. Just past 1000 hours: Deputy Sheriff Bennie Byrum arrives in civilian clothes
(Green Mountain Dew tee-shirt). Byrum is placed under Citizen's arrest.

1 Approximately 1006 hours: While the group has been waiting/talking on the mid-level landing
2 Deputy Sheriff Byrum has been in contact with Judge Carroll Ross. At 1007 hours Byrum
3 confronts the group, delivers Carroll Ross' verbal order to leave the Courthouse, and Byrum
4 further delivers Ross' written order to the Grand Jury. (At this point, Judge Carroll Ross and
5 Byrum violated their oaths, see 18 U.S.C. Sec. 1621, committed breach of oath and treason, see
6 Article III, Section 3; 18 U.S.C. Sec. 2381; committed misprision of a felony 18 U.S.C. Sec. 4,
7 committed obstruction see 18 U.S.C. 1510 and RICO 18 U.S.C. Sec. 1962 (emphasis mine)
8 because Judge Ross and Sheriff Byrum protected a tortfeasor and a criminal enterprise and
denied the Petitioner constitutional access to courts to arrest a criminal.)

9 80. About 1008 hours: Moments after Deputy Sheriff Bennie Byrum had executed
10 Judge Ross' order for (Petitioner's) removal from the Courthouse.

11 Approximately 1015 hours: Sweetwater PD Detective Sergeant Bill Illingworth and
12 (Petitioner) walk and talk.

13 81. Approximately 1019 -1024 hours: Madisonville Detective Sergeant Jeremy Harrell
14 and (Petitioner) are in discussion. Deputy Sheriff Bennie Byrum is inside communicating with
15 Judge Ross. Ross lays out to Byrum those charges upon which (Petitioner) is to be arrested.
16 Ross' accusations are reduced to writings (fraud see 18 U.S.C. Sec. 1001) . Byrum then comes
outside, hands the paper to Detective Harrell saying: "1, 2, 3 charges.

17 82. Harrell hands the writing to Madisonville PD Detective Captain Darron Bivens.
18 (violation of 18 U.S.C. Sec. 1622 subordination of perjury - another misprision of felony by the
19 Monroe enterprise has just occurred adding to the RICO wheel) By this time (Petitioner) sees
20 Monroe County Sheriff Bill Bivens standing next to Darron Bivens. (Petitioner) arrests Sheriff
21 Bill Bivens. Madisonville Detective Darron Bivens then arrests (Petitioner). See video link .

22 83. Approximately 1030 hours: (Petitioner's) Citizen's arrest of Monroe County Sheriff
23 Bill Bivens. Madisonville Police Detective Captain Darron Bivens arrests (Petitioner). (another
24 misprision of felony title 4 violation by the Monroe County group adding yet another example
to the RICO wheel conspiracy.)

25 84. At this point the predicate actors acting jointly to advance a RICO and ultra vires
26 criminal conspiracy of fraud and racketeering on unlawful orders by their mastermind judge by
27 force of fraud , assault and battery, falsely arrest , and kidnapping, in violation of 18 U.S.C.
28 Sec. 1201, take Petitioner off the street and falsely imprison Petitioner Fitzpatrick in a
condition of extortion and peonage in violation of Title 18, U.S.C., Sec. 1581(a) by bringing
him to their jail against his will instead of arresting Gary Pettway.

1 85. The following are the violations which I believe have occurred:

2 1. *Retaliation against a witness (18 U.S.C. Sec. 1513);*

3 2. *Tampering with a witness (18 U.S.C. Sec. 1512);*

4 3. *Assault within the maritime jurisdiction (18 U.S.C. Sec. 113);*

5 4. *Aiding / abetting slavery by holding, returning or arresting any person to return him/her to*
6 *peonage (13th Amendment; 18 U.S.C. Sec. 1581);*

7 5. *Stealing, altering, falsifying, removing or avoiding a court record with consequential impact*
8 *on a judgment (18 U.S.C. Sec. 1506);*

9 86. On 3 June, 2010, imposter Foreman Angela Davis ordered Petitioner arrested on the
10 two additional felony charges which the Grand Jury fabricated out of thin air in the courtroom
11 that day. Ms. Angela Davis was known to have served on a Monroe County Trial Jury in 2009
12 making her ineligible to sit as foreman in 2010 pursuant to Tennessee statutes (see TCA 22-2-
13 314) the 1 year term limits for jurors.

14 87. Petitioner brought a complaint about the Respondents' criminal conduct on the 9
15 June, 2010 to Special Agent Washington of the TBI (refer to Exhibit "20" - a Washington
16 document.) On 10 June, 2011 Petitioner made a public records request for information on his
17 recent arrest and the felony charges placed against him (refer to exhibit "21" - 10 June 2010
18 ON DEMAND PUBLIC RECORDS REQUESTS document). There is no accuser found on
19 record. No police investigation reports /record were provided. No physical evidence reports
20 were provided. No witness statements were provided. No witness interviews occurred. No
21 narrative statement of any type or kind laying out on paper the government's theory behind and
22 supporting the charges Petitioner faced or the two arrests Petitioner suffered by that time was
23 in evidence. A clear violation of Petitioner's Fifth and Sixth Amendment rights is shown here.

24 88. On Monday, 28 June, 2010 Petitioner was arraigned on six charges: Two felonies
25 and four misdemeanors with Judge Carroll L. Ross presiding! (Judges are not supposed to sit
26 on their own cases.) Judge Carroll L. Ross was the author of the first three misdemeanors
27 from Thursday, 1 April, 2010. Ross recused himself and Judge Amy Armstrong Reedy *at the*
28 *end* of this 28 June 2010 arraignment hearing. Petitioner demanded from Judge Ross--in
writing and audibly--to name Petitioner's accuser(s) in open court. Judge Ross refused. (A
Sixth Amendment violation .)

 89. On 7 July 2010 in a hearing before Judge Blackwood, Petitioner filed a MOTION to
DISMISS (refer to Exhibit "22"). It was refused. The Court Reporter that day was the same

1 court reporter present for Carroll Ross during the 28 June 2010 arraignment hearing.

2 Additional predicate actors sustained the fraud and RICO wheel conspiracy.

3 90. Petitioner objected to the Judge regarding the lack of document production so far
4 experienced responsive to requests for transcripts of all types from the 28 June event and again
5 requested that they be made available. The Judge reacted by saying that all the Petitioner was
6 ever going to get was a typed transcript. Rules of this Court proscribe the release of all
7 exculpatory evidence of audio or video recordings. (This is an Art 6 Bill of Rights Amendment
8 Brady violation.) He objected again saying it was public knowledge that an audio recording
9 existed. The Judge said it made no difference; rules of the Court prohibited public
10 dissemination.

11 91. Petitioner filed four subpoenas before the hearing for document production and
12 received nothing:

- 13 • For Court Report Transcripts of the 28 June arraignment hearing
- 14 • One subpoena each for the three local Knoxville television stations for raw video
15 footage (DVD) format they hold from the 28 June arraignment hearing:

16 WATE-TV - ABC affiliate in Knoxville

17 WBIR-TV - NBC affiliate in Knoxville

18 WVLT-TV - CBS affiliate in Knoxville

19 92. Petitioner was denied exculpatory evidence and access to vital court records;
20 again a Sixth Amendment violation. This was unlawful prevention of public access to records.
21 When records are willfully concealed or destroyed to prevent public inspection, which act, or
22 failure to act, is designated an act of Official Misconduct and is a violation.

23 93. On Saturday, 17 July, 2010: Mr. Jim Miller was murdered just miles from
24 Petitioner's home in a mob-style hit. Mr. Miller was another whistleblower who, it is believed,
25 was murdered because of what he knew concerned the colossal corruption in Monroe County,
26 Tennessee. It is believed that Mr. Miller was about to come forward with his revelations
27 specifically targeting the Monroe County Sheriff's Department in the days leading up to the 5
28 August 2010 reelection bid of Bill Bivens. There are connections to the Jim Miller murder and
county officials covering up what actually occurred.

94. On 2 August 2010 Petitioner learned that the TBI infringed on the Petitioner's
Second Amendment right to keep and bear arms when in fear for his life and safety. Petitioner

1 attempted to purchase a firearm for home self defense and was blocked from purchasing one.
2 This is clearly a constitutional Violation of the Second Art Amendment of the Bill of Rights.

3 95. FBI Special Agent-in-charge Richard L. Lambert was approached and complaint
4 was made only to be met with further silence and more obstruction.

5 96. On 30 September, 2010 Petitioner became aware of a Time magazine article by
6 Barton Gellman concerning Petitioner. This article libeled Petitioner and colored Petitioner's
7 case.

8 97. On 5 October, 2010, Judge Jon Kerry Blackwood heard arguments to Dismiss the
9 case and to render the charges against Petitioner void due to the presence of Angela Davis as
10 Foreman to the Monroe County Tennessee Grand Jury on 3 June, 2010. Judge Blackwood
11 denied each motion verbally. Blackwood said he was going to look past the problem as it
12 related to illicit Foreman Angela Davis and rely instead upon the work product of the
13 remaining Grand Jurors (side stepping the fact that each and every one of those Grand Jurors
14 knew Gary Pettway, including Angela Davis).

15 Events surrounding the Monroe County Sheriff's arrest of
16 Wednesday, 27 October, 2010

17 98. Notice of councilor Pidgeon's withdrawal was filed with Clerk of the Court Marty
18 Cook on 19 October, 2010. The next scheduled hearing according to Petitioner's knowledge
19 was in December. The judge in this instant matter advanced a bench warrant based on an
20 alleged Notice to Appear that Petitioner was unaware of because he had not been personally
21 served. It was later learned that it had been placed in the bottom of the screen door to
22 Petitioner's house where it was not visible to Petitioner on a door petitioner doesn't normally
23 use.

24 99. On 27 October, 2010, Petitioner was violently assaulted by predicate actor(s)
25 Deputies serving a foundationless and inchoate bench warrant issued by Jon Kerry Blackwood,
26 (a violation of 18 U.S.C. Sec. 1201 kidnapping). The Petitioner was charged with resisting
27 arrest and assault on an officer while attempting to protect himself from the force exerted on
28 him by several well armed deputies who violently broke down the Petitioner's door (a Fourth
Amendment violation of the castle doctrine) in a surprise assault in the evening. He resisted
their home invasion kidnapping and the officers then used excessive force to subdue the
Petitioner. They tazered him three times. During this event, Petitioner was medically injured by

1 officers who broke into his home and almost tore off his ear (violation: see 28 USC "Sec. 2680
2 tort claims act assault and battery by law enforcement). (Refer to Exhibit "23".)

3 100. The Petitioner, Walter Fitzpatrick, was imprisoned from 27 October, 2010 through
4 December 2010. Petitioner was held in solitary confinement in inhumane conditions (a
5 violation of Eighth Amendment; cruel and unusual punishment and a violation of international
6 law).

7 **VI. CONSTITUTIONAL AND LAWFUL GROUNDS FOR HABEAS RELIEF**

8 **CAUSES OF ACTION**

9 **A. HABEAS CORPUS**

10 101. The Court of Record will find that Respondent's actions constitute unlawful
11 custody cognizable in Habeas Corpus under 28 U.S.C. §2241 the previous paragraphs 1- 100
12 and also incorporated by reference herein in Petitioner's Evidence Exhibits "1"- "35", Federal
13 Habeas Memorandum in Law with Points and Authorities and Federal Questions, and all
14 affidavits by next friend MJ Blanchard and Republic Citizens' Ombudsman Michael Lerman.

15 **FIRST CLAIM FOR RELIEF**

16 **CONFRONTATIONAL CLAUSE - SIXTH AMENDMENT**

17 Petitioner was never allowed to confront his accuser (s)

18 102. As a first, separate cause of action for habeas relief on file herein In Inc Case No.
19 10-213 the Petitioner was never allowed to confront his accuser(s) the basis for which the
20 prosecution used as justification for forwarding claims in Inc Case No. 11-018 that resulted in
21 the sentence that Walter Fitzpatrick III is currently being unlawfully held under.

22 103. Bar union shop member defense attorney from the beginning of Petitioner's case
23 to the present time failed to render competent assistance of council which has resulted in a
24 serious breakdown in the adversarial process that *has resulted in prejudice against* the
25 Petitioner and resulted in a severe deprivation of his protections guaranteed under the Sixth
26 and other Amendments of the United States Constitution. These deprivations amount to a
27 substantive denial of due process protection and meaningful access to the Court of Record.
28 Refer to Petitioner's Evidence Exhibit "21" where demand was made but no documents were
furnished.

104. Petitioner was never allowed to be informed of the true nature and cause of the
commercial, quasi in rem, secret, equity court proceedings, producing a fraud on the court, that

1 was enabled, aided and abetted by his former defense council and bar attorneys of the
2 prosecution in conspiracy to defraud Petitioner's constitutional protections by design.
3 Petitioner was never afforded the Art VI Amendment of the Bill of Rights Constitutionally
4 protected right to a meaningful and fair opportunity to confront the truthfulness or accuracy of
5 his accuser's story nor to be able to discover the true nature and cause of the proceedings.

6 105. The Petitioner was denied a Bill of Particulars by his and their attorney. The
7 Petitioner was entitled to a suppression hearing and to prevail at that suppression hearing to
8 suppress the "fruit of a poisonous tree" evidence presented by the corrupt police officer. This
9 was not allowed. The Supreme Court holding in the case of *Weeks v. United States*,
10 232 U.S. 383 (1914), "evidence that was illegally obtained cannot be used in court!"

11 106. The Supreme Court also held that when a charging document lacks sufficient
12 particularity to allow a defendant to prepare a defense, as here, the Defendant's ability to
13 confront adverse witnesses and use compulsory process is seriously inhibited, if not irreparable
14 obstructed. Obviously, due process requires that an accused enjoy the opportunity to defend,
15 including being able to examine witnesses, offer evidence in defense, and be represented or
16 assisted by fully prepared trial council. See *Oliver*, 333 U.S 257 (1948) Denial of a right to
17 defend is an error of constitutional magnitude requiring proof that the error involved was
18 harmless beyond a reasonable doubt. See *Chapman v. California* 386 U.S 18. 23-24 1967.

19 107. The above facts alone (see paragraphs 102 – 105) should have been reason enough
20 to vacate the entire judgment, but there is more. The attorney acting as defense council was
21 informed of these facts and did nothing to remedy or provide recourse for these unlawful acts
22 carried on by the prosecution thereby failing to stop the fraud¹ and to properly function as
23 defense council as required of him under the Art Six Amendment of the Bill of Rights and
24 therefore failing the crucible of adversarial testing of the prosecution's case.

25 108. Petitioner's Bar attorneys acting as defense council failed to demand a Bill of
26 Particulars; failed to conduct discovery; failed to demand sworn affidavits and sworn testimony
27 so as to fully adversarially test the respondent's claims; failed to ascertain who gave the illegal
28 Order for the Petitioner's arrest and failed to provide the Petitioner all records and transcripts.

¹ Moral Turpitude (Black's Law Dictionary, Seventh Edition) - *Conduct that is contrary to justice, honesty, or morality. In the area of legal ethics, offenses involving moral turpitude – such as fraud or breach of trust – traditionally make a person unfit to practice law. – Also termed moral depravity.*

1 The failure to do these has resulted in serious injury, depravation and violation of the Sixth
2 Amendment against Walter Fitzpatrick III, the Petitioner, which has resulted in a serious
3 miscarriage of justice and can only be remedied by his immediate and unconditional release
4 from this extra-judicial, unlawful incarceration.

5 109. The whole Nation and Our Veterans are watching this. This issue was addressed
6 by the Supreme Court case of Williams v. Taylor, essential elements being: trial counsel's
7 failure to adequately investigate and present evidence of Petitioner applying a prejudice test
8 purportedly based upon Lockhart v. Fretwell, rather than Strickland failing to give adequate
9 weight to the mitigation evidence that trial counsel had failed to develop. Relief available
10 should be under the "unreasonable application" clause.

11 110. To prevail on a claim of ineffective assistance of counsel, Petitioner must show
12 at minimum:

- 13 (1) that his counsel's performance was deficient, and
- 14 (2) that the deficient performance prejudiced his defense. Strickland v. Washington, 466
15 U.S. 668, 689-94 (1984).

16 111. "To establish deficient performance, a petitioner must demonstrate that counsel's
17 representation 'fell below an objective standard of reasonableness.'" Wiggins v. Smith, 123 S.
18 Ct. 2527, 2535 (2003) (quoting Strickland, 466 U.S. at 688). "[T]o establish prejudice, a
19 'defendant must show that there is a reasonable probability that, but for counsel's
20 unprofessional errors, the result of the proceeding would have been different. A reasonable
21 probability is a probability sufficient to undermine confidence in the outcome.'" Id. at 2542
(quoting Strickland, 466 U.S. at 692). With the Strickland framework in mind, we turn to
22 Petitioner's specific ineffective assistance claims.

23 SECOND CLAIM FOR RELIEF

24 Prosecutorial vindictiveness

25 112. As a second, separate cause of action for habeas relief on file herein are Violation
26 of the US Constitution Fifth and Fourteenth Amendments. Petitioner is under the restraint of a
27 court *not* of record. The proceeding came about as a result of prosecutorial vindictiveness and
28 retaliation. The people believe that the following essential elements, which are supported
herein by this petition by notice and affidavits, have the appearance of prosecutorial
vindictiveness. They are as follows:

- The Use of “Poisonous Tree” evidence
- No affidavit in support of claim that is free from fraud and hearsay
- No affidavit of a competent fact witness free from fraud
- The use of a fictitious name for plaintiff
- The falsification and suppression of public documents
- The denial of a Bill of Particulars
- The denial of access to transcripts and records
- The denial of meaningful access to a Court of Record and to be reasonably heard
- Execution of a jurisdictionally baseless declaration
- Filing of jurisdictionally baseless and unsworn complaints
- Month long solitary confinements as retaliation for challenging the unlawful behavior of the Monroe County Court’s Officers by notice of jurisdictional defect. See Exhibit “A” by Petitioner calling the question of misconduct by the respondents on behalf of the Petitioner of prosecutorial vindictiveness and severe human rights violations by jail Custodians

113. The People believe that lack of subject matter jurisdiction, deprivation of federal and state protected rights under the US Constitution, Article 1, Sections 9 and Art 10, and 1 and 4-10, Amendments of the Bill of Rights under color of authority, fraud on the court, breach of contract, negligence, breach of duty, possible securities fraud pursuant to Court registry investment system (Cris Report), conspiracy, and RICO are also signs of prosecutorial vindictiveness.

114. The CUSTODIANS do not state and the proceedings do not show any lawful authority or jurisdictional facts enabling the CUSTODIANS to lawfully take dominion over a People of the United States. Lacking such jurisdiction, their actions can only be under color of law, violating due process, in order to execute their own private agendas, whatever they may be (perhaps barratry, i.e. the offense of frequently exciting and stirring up quarrels and suits, either at law or otherwise). They are vindictive.

115. The Petitioner normally bears the burden of proving facts on which a claim for relief is based, but if a possibility that increased or additional charges violating due process supporting charge of prosecutorial vindictiveness is at issue, the Petitioner only needs to demonstrate facts giving rise to presumption of vindictiveness at which time, even on habeas corpus, burden shifts to the people to rebut resumption. In re Bower (1985) 38 Cal3d 865, 872, 215 CalRptr 267, 700 P2d 1269.

1 116. The Fifth Amendment, made applicable to the states through the Fourteenth
2 Amendment, commands that "no person . . . shall be compelled in any criminal case to be a
3 witness against himself." The essence of this basic constitutional principle is "the requirement
4 that the State which proposes to convict and punish an individual produce the evidence against
5 him by the independent labor of its officers, not by the simple, cruel expedient of forcing it
6 from his own lips." Culombe v. Connecticut, 367 U.S. 568, 581 -582 (1961) In Torres v
7 Superintendent of Police Puerto Rico the essential element that misuse of the legal proceeding
8 was so egregious that he suffered deprivation of constitutionally secured rights.

9 THIRD CLAIM FOR RELIEF

10 Due Process – Fifth Amendment Violation of Equal Protection - 11 Fourteenth Amendment to the United States Constitution

12 117. As a third, separate cause of action for habeas relief on file herein Petitioner was
13 denied due process of law and equal protection of the law in violation of the Tennessee State
14 Constitution, the Fifth and Fourteenth Amendments to the US Constitution.

15 118. There is an absence of State fact-findings due to inadequate State fact-finding.
16 There is an absence of a State hearing because the State hearing process was not "full and fair"
17 and violated due process. State fact-findings are unsupported by the record. State Court lacked
18 jurisdiction over Petitioner in the State Court hearing (i.e. no injured party was produced, and
19 Petitioner was never properly within the court's jurisdiction) (28 USC 2254(d)(4)). Criminal
20 process must allege every essential element of the offense. c; Hagner v US, 285 US 427;
21 Hamling v US, 418 US 87, and quoting United States v. Cruikshank, 92 U.S. 542, 558 (1875):
22 "it is not sufficient that the indictment shall charge the offense in the same generic terms as in
23 the definition; but . . . it must descend to particulars."

24 119. Note: the primary goal of the Framers of the Fourteenth Amendment was to
25 duplicate the inherent meaning of the Fifth Amendment's clause, and to generally follow
26 judicial interpretation of the Fifth Amendment. It is well-known that the federal Due Process
27 Clause has its origins in the "law of the land" clause of Magna Carta. The Due Process Clause
28 refers to a process of law that is owed to a person according to "the law of the land," rather
than according to some different set of principles or beliefs. The phrase "law of the land" refers
to positive law, as well as compatible common law i.e., "no freeman ought to be taken,
imprisoned, or disseised (*deprived* –emphasis mine) of his freehold, liberties, privileges or

1 franchises, or outlawed or exiled, or in any manner destroyed or deprived of his life, liberty or
2 property but by the law of the land.”

3 120. Quoting Justice Bradley, “Failure to provide all process that is due may not
4 normally be treated as harmless error, according to the Due Process Clause, and statutes may
5 not normally treat it as such.” Violation of Fifth and Fourteenth Amendments of the U.S
6 Constitution of due process and equal protection of the law are shown here.

7 FORTH CLAIM FOR RELIEF

8 Due Process – Fifth Amendment,

9 Violation of Equal Protection - Fourteenth Amendment

10 To the United States Constitution

11 120. As a fourth, separate cause of action for habeas relief on file herein, by the actions
12 described above, Respondents, acting under color of law, have violated and continue to
13 discriminate and violate the rights of this detained Petitioner to be free from arbitrary,
14 prolonged, and indefinite detention, in violation of the Due Process Clause of the Fifth
15 Amendment and the Equal Protection Clause of the Fourteenth Amendments to the United
16 States Constitution. The incarceration Order as applied to petitioner is discriminatory and
17 violates the Fifth and Fourteenth Amendments.

18 121. The Defense council’s suppression of exculpatory evidence appears to violate the
19 due process clause - The United States Supreme Court ruled that a state court commits a
20 federal constitutional error when it excludes highly relevant and necessary defense evidence.”
21 (Ibid., see also Rock v. Arkansas (1987) 483 U.S. 44, 53-56. Importantly, a federal claim may
22 be made even if no error was made under state law.

23 122. “A prosecutor's misconduct may be so egregious that it rises to the level of a due
24 process violation.” (Darden v. Wainwright (1986) 477 U.S. 168, 181.) Thus, in any case where
25 the prosecutor engages in substantial misconduct, a federal claim should be advanced.
26 16Am Jur 2d., Const. Law Sec. 70: “No public policy of a state can be allowed to override the
27 positive guarantees of the U.S. Constitution.”

28 FIFTH CLAIM FOR RELIEF

Due Process – Violation of International Law

1 123. As a fifth, separate cause of action for habeas relief on file herein, by the actions
2 described above, Respondents, acting under color of law, have violated and continue to violate
3 Customary International Law, Articles 9 & 14 of the International Covenant on Civil and
4 Political Rights, and Articles 18, 25, & 26 of the American Declaration on the Rights and
5 Duties of Man.

6 124. Respondents have prolonged the indefinite and arbitrary detention of the Petitioner
7 without legitimate lawful process in violation of binding obligations of Tennessee and the
8 United States under International Treaty Law. Respondents are likewise acting in violation of
9 International Law, since they are acting on the Judge's direction. On its face, the Commitment
10 Order violates International Law. "Because Treaties are the supreme law of the land, judges are
11 bound to take Judicial Notice thereof." *Holguin v Elephant Butte Irrigation Dist.*, 1977, 575
12 P2d 88, 91 N.M 398.

13 SIXTH CLAIM FOR RELIEF

14 Torture - Violation of Amendment VIII

15 Of the United States Constitution and International Law

16 125. As a sixth, separate cause of action for habeas relief on file herein Respondents
17 tortured Petitioner, violating his rights at Amendment VIII of the United States Constitution
18 and International Law.

19 126. The following acts constitute torture: solitary confinement for months at a time; no
20 showers permitted for 24 days; cold damp cell that is a cement box; cell that smells like
21 sewerage; lights left on 24 hours a day; continuous noise and draft; no warm clothing allowed
22 from the outside; no running water - only a jug of tap water; toilets that can only be turned on
23 and flushed by the guards; showering occurring outside in winter temperatures. All these
24 conditions are occurring against the Petitioner's will. These are violations of Article 1, Article
25 2 section 1, 2, 3, Article 4 section 1, Article 9 section 1, Article 10 section 1, Article 12 section
26 1, Article 13, Article 14, Article 15 and Article 16 of the UN Convention Against Torture and
27 Other Cruel, Inhuman or Degrading Treatment or Punishment entered into force by treaty 26
28 June 1987, in accordance with Article 27.

SEVENTH CLAIM FOR RELIEF

Failure to State a Cause of Action

1 127. As a seventh, separate cause of action for habeas relief on file herein,
2 this Petitioner alleges that said Respondent's compliant used misnomers and procedural
3 phantoms in law and did not identify a real party in interest and each and every Cause of
4 Action therein fails to state a cause of action. Petitioner denies being a corporation or an *ens*
5 *legis* entity and has not seen any evidence from a competent fact witness with first hand
6 knowledge to dispute this fact.

7 EIGHTH CLAIM FOR RELIEF

8 Laches

9
10 128. As a eighth, separate cause of action for habeas relief on file herein, this Petitioner
11 alleges that Respondents seek secret equitable relief and its inequitable conduct constitutes
12 laches and therefore bars the granting of that relief to Respondents herein.

13 NINTH CLAIM FOR RELIEF

14 Mitigation of Damages

15
16 129. As a ninth, separate cause of action for habeas relief on file herein, this petitioner
17 alleges that Respondents have failed to take all reasonable steps to mitigate their damages, if
18 any have been incurred.

19 TENTH CLAIM FOR RELIEF

20 Statute of Frauds

21
22 130. As a tenth, separate cause of action for habeas relief on file herein, this petitioner
23 alleges that the Respondents are barred by the provisions of Tennessee code annotated 8-17-
24 101. where it says that the integrity of the processes of local government be secured and
25 protected from abuse" and where it also says " that citizens of Tennessee are entitled to an
26 ethical, accountable and incorruptible government."

27 ELEVENTH CLAIM FOR RELIEF

28 Unclean Hands

1 131. As a eleventh, separate cause of action for habeas relief on file herein, this
2 petitioner alleges that the Respondents are barred by their conduct with respect to the matters
3 set forth in the habeas because of their unclean hands, and by reason thereof, Respondents are
4 precluded from recovering within the action.

5
6 TWELFTH CLAIM FOR RELIEF

7 Estoppel

8 132. As a twelfth, separate cause of action for habeas relief on file herein, this
9 petitioner alleges that the Respondents are barred because the Respondents have engaged in
10 conduct and activity with respect to the subject of this litigation, and by reason of said
11 activities and conduct are estopped from asserting any claims for damage or seeking relief
12 against this Petitioner cross claimant.

13 THIRTEENTH CLAIM FOR RELIEF

14 Waiver

15
16 133. As a thirteenth, separate cause of action for habeas relief on file herein, this
17 Petitioner alleges that the Respondents are barred because the Respondents have engaged in
18 conduct and activity sufficient to constitute a waiver of any alleged breach of conduct, contract
19 or any other conduct, if any, as set forth in the Respondent's Complaint.

20 FOURTEENTH CLAIM FOR RELIEF

21 Negligence

22
23 134. As a fourteenth, separate cause of action for habeas relief on file herein, this
24 Petitioner alleges that the Respondents are barred due to the negligence of the Respondents or
25 other parties involved in the present action.

26
27 **VII . THREE DAY ORDER TO SHOW CAUSE AS TO WHY HABEAS CORPUS**
28 **SHOULD NOT ISSUE FOR PETITIONER'S RELEASE AND WHY CRIMINAL**
 COMPLAINTS FOR TORT CLAIMS SHOULD NOT BE AT ISSUE FROM THE
 PETITIONER AND THIS COURT OF RECORD

1 135. Respondents have 3 days in which to answer each and every counter claim for
2 habeas relief and allegations of the tort claims for damages arising from this case.

3 **Notice to agent is notice to principal and notice to principal is notice to agent.**

4 There are TWO lawfully excusable conditions for seizing, searching any property or person:

5 a) a warrant of the law, or

6 b) first-hand observation of a felony being committed.

- 7 • Respondents must provide the warrant and supporting affidavit.
- 8 • Respondents must provide the indictment of a Grand Jury and supporting affidavits of
9 appointment attesting to certification of juror qualification pursuant to Tennessee
10 state law.
- 11 • Respondents must provide the warrant supported by Oath or affirmation.
- 12 • Respondents must provide their public hazard bonding and insurance surety
13 information.
- 14 • Respondents must provide their County and States corporation Federal employer
15 identification number.
- 16 • Respondents must provide their Foreign Agent Registration.
- 17 • Respondents must provide the names of witnesses against Petitioner.
- 18 • Respondents must provide their Dunn and Bradstreet Rating.
- 19 • Respondents must provide their last 7 years of financial disclosure, C.R.I.S. Report
20 and D.T.C account info .

21 136. Udall's⁴⁵ "Harassment by unfounded litigation would cause a deflection of the
22 prosecutor's energies from his public duties, and the possibility that he would shade his
23 decisions instead of exercising the independence of judgment required by his public trust."
24 Imbler, 424 U.S. at 423, 96 S.Ct. at 991. "There is no great danger that abuse of power will be
25 fostered by this exemption from civil liability, for the prosecutor is at all times under the
26 wholesome restraint imposed by the risk of being called to account criminally for official
27 misconduct, or of being ousted from office on that account.

28 137. Crime consists of the constitutional standing requirements of injury, causation,
and redressability. Allen, 468 U.S. at 752. 'Jurisdiction' refers to the power of the court to
decide a case, i.e., to render a decision that will be recognized and enforced by authorities
and other courts. Jurisdiction is of two types:

1. Subject matter jurisdiction and jurisdiction over the parties. A court must have
both types of jurisdiction before it has jurisdiction to decide the case.

2. In personam, (or personal jurisdiction) is the power of a court to adjudicate the personal legal rights of parties properly brought before it.

VIII. 72 COUNT CRIMINAL COMPLAINT OF TORT VIOLATION CLAIMS

138. Criminal Compliant Summary List of Tort Violation Claims:

- Count 1: Summary Judgment
- Count 2: High Crimes and Misdemeanors.
- Count 3: Obstructing Justice.
- Count 4: Violation of the Bill of Rights Amendment 1.
- Count 5: Illegal search and seizure.
- Count 6: No Just Compensation.
- Count 7: Subjected to jeopardy of life and limb without a indictment.
- Count 8: False Imprisonment.
- Count 9: Compelled witnessing against selves.
- Count 10: Refused witnesses in defense.
- Count 11: Obstructed a Jury Trial.
- Count 12: Excessive fines and cruel and unusual punishment.
- Count 13: Enumerated rights and violated unalienable rights.
- Count 14: False arrest and involuntary servitude.
- Count 15: Violate Civil Rights under Color Of Law.
- Count 16: Improper jurisdiction.
- Count 17: Genocide caused serious bodily injury.
- Count 19: Acts of Genocide.
- Count 20: Color of Law deprivation of rights.
- Count 21: Trick or scheme.
- Count 22: Struck against the Constitution
- Count 23: No immunity.
- Count 24: No Immunity for state actor.
- Count 25: Conspiracy with state(s) actors.
- Count 26: Willfully subjected Petitioner to the deprivation of rights.

139. Additional tort violations:

1 Count 27: Abuse of Official Capacity
2 Count 28: Abuse of the Public Truth
3 Count 29: Accepting State Funds Under False Pretences
4 Count 30: Aggravated Assault
5 Count 31: Aggravated Kidnapping
6 Count 32: Aggravated Perjury
7 Count 33: Barratry
8 Count 34: Conspiracy to Discriminate & Deny Rights
9 Count 35: Crimes Against Humanity
10 Count 36: Criminal Trespass
11 Count 37: Deceptive Trade Practices
12 Count 38: Deformation of Character
13 Count 39: Denial of Access to the Court
14 Count 40: Denial of Due Process
15 Count 41: Dereliction of Duty
16 Count 42: Deliberate Fraud
17 Count 43: Deliberate Perjury
18 Count 44: False Arrest
19 Count 45: False Imprisonment
20 Count 46: False Pretenses
21 Count 47: Falsifying a Record
22 Count 48: False Representation
23 Count 49: Felony Breach of Oath
24 Count 50: Forgery
25 Count 51: Harassment
26 Count 52: Identity Theft
27 Count 53: Impersonating an Public Official
28 Count 55: Libel
Count 56: Misuse of government documents
Count 57: Official Misconduct
Count 58: Official Oppression

140. More tort violations:

1 Count 59: Obstruction of Justice
2 Count 60: Overthrowing the Constitution
3 Count 61: Perfidy
4 Count 62: Preemption
5 Count 63: Presumption
6 Count 64: Proof Beyond a Reasonable Doubt
7 Count 65: Racketeering (RICO)
8 Count 66: Sedition
9 Count 67: Simulating Legal Process
10 Count 68: Slander
11 Count 69: Stalking
12 Count 70: Theft by Deception
13 Count 71: Theft of Services
14 Count 72: Treason, De
15 141. Particular Immediate Criminal Acts, or Components there-to of tort violations :
16 ___x___ Breach of the Peace,
17 ___x___ Reckless Endangerment,
18 ___x___ False Imprisonment,
19 ___x___ Battery (Un-Reasonably Seizing a Person, by physical contact),
20 ___x___ False Arrest
21 ___x___ Assault (threat and actually doing bodily harm)
22 ___x___ Unreasonably Searching, Seizing or Violating a Person's Right to be Secure in his
23 Home.
24 ___x___ Unreasonably Searching, Seizing or Violating a Person's Right to be Secure in his
25 Papers.
26 ___x___ Unreasonably Searching, Seizing or Violating a Person's Right to be Secure in his
27 Effects.
28 ___x___ Failure to Produce Any lawful Warrant.
___x___ Acting Upon Defective Warrant; Issued without "Probable Cause".
___x___ Acting Upon Defective Warrant; Issued without Oath and/or Affirmation.
___x___ Acting Upon Defective Warrant; Issued without Particular Description of place to be
searched, or the person or thing to be seized.
___x___ Holding a "Secret Court" (similar to the old Star Chambers).

- 1 ☒ Administering Justice Without "Open" Judicial Process.
- 2 ☒ Forcing People to "Purchase" Justice.
- 3 ☒ Being Partial or "In-Complete" in the Administration of Justice.
- 4 ☒ Un-Necessarily Delaying the Administration of Justice.
- 5 ☒ Obstructing a man's Remedy by Due Course of Law for Injury done him in his
6 Person.
- 7 ☒ Obstructing a man's Remedy by Due Course of Law for Injury done him in his
8 Property.
- 9 ☒ Obstructing a man's Remedy by Due Course of Law for Injury done to his Reputation.
- 10 ☒ Obstructing the Right to Trial by a clean Jury.
- 11 ☒ Failure to Conduct Criminal Trials through Trial by an "Impartial" Jury within the
12 County in which the Offence is alleged to have been committed.
- 13 ☒ Failure to Provide full Opportunity for the Accused to be "Heard" at a Criminal Trial.
- 14 ☒ Failure to Provide full Opportunity for Council to be "Heard" at a Criminal Trail.
- 15 ☒ Failure to Provide a "Copy" of the "Nature and Cause" of the Accusations Against the
16 Accused.
- 17 ☒ Failure to Compel the "Witnesses" Against the Accused to meet with him "Face to
18 Face" in Open Court before the Jury.
- 19 ☒ Failure to Provide Process to the Accused for "Obtaining Witnesses in his Favor".
- 20 ☒ Compelling the Accused to "Testify Against Himself" in a Criminal Proceeding.
- 21 142. Particular Immediate Criminal Acts, or Components there-to of tort violations
22 continued:
- 23 ☒ Treating an Arrested Person with "Un-Necessary Rigor",
- 24 ☒ Failure to provide Bail and bond.
- 25 ☒ Giving a Particular Class of Persons a "Title of Nobility" of Privileges or Immunities
26 which are not available to the class of the Accused.
- 27 ☒ Enforcing "Laws" which do not depend for their Effect upon Constitutional
28 Authority or upon a vote of the "Special or Local" Electors Interested in said "Laws".
- ☒ Suspending the Operation of "Laws" without the Authority of the Legislature.
- ☒ Un-Lawfully "Suspending Writ of Habeas Corpus".
- ☒ Levying War against the State.
- ☒ Adhering to or Giving Aid and Comfort to the Enemies of the State.
- ☒ Restraining the People from Assembling together in a Peaceable Manner.

- 1 ☒ Interfering with the Right of the People to Bear Arms.
- 2 ☒ Interfering with the Right of the People to make citizen's arrests.
- 3 ☒ Conspiring to render the Military Power In-Subordinate to the Civil Power.
- 4 ☒ Construing an Impairment Against some of the Rights Retained by the People by
5 way of a failure to Completely Enumerate them in the Constitution.
- 6 ☒ Enforcing Slavery or Involuntary Servitude without a Lawful Criminal Conviction.
- 7 ☒ Conspiring to Abolish the Separation of Powers within the Tennessee State
8 Government.
- 9 ☒ Making Laws Applicable Against the Jurisdiction of the Common Law
10 Courts, (as prohibited by Constitution).
- 11 ☒ Conspiring to Undermine the Independence of the Judicial Department.
- 12 ☒ Subverting the Duty to Hear Proceedings in a Fair, Deliberative and Patience
13 Manner.
- 14 ☒ Subverting the Right of a Legally Interested Person to be Fully Heard according to
15 Law.
- 16 ☒ Failing to Explaining for Public Information Purposes the Proceedings of the Court.
- 17 ☒ Extortion.
- 18 ☒ Fraud.
- 19 ☒ Intentional Infliction of Emotional Distress.
- 20 ☒ Slander.
- 21 ☒ Liable.
- 22 ☒ Participating in Corrupt Organizations (RICO).
- 23 143. Conclusive Criminal Acts, or Components there-to:
- 24 ☒ Subverting Public Confidence in the Integrity and Impartiality of the Judiciary.
- 25 ☒ Being Un-Faithful to the Law.
- 26 ☒ Perjury of Oath.
- 27 ☒ Malicious Prosecution.
- 28 ☒ Malicious Abuse of Legal Process.
- ☒ Corruption of Office.
- ☒ Malfeasance of Office.
- ☒ Delinquency of Office.
- ☒ Obstruction of Justice.
- ☒ Destroying Respect for Law.

☒ Subverting "Justice" from its True Base within the "Rule of Law".

☒ Subverting the Respect, Dignity, and Protection of the Individual from its traditionally grounded and dependant base upon the "Rule of Law".

☒ Subverting and Making Impossible Enlightened, Rational Self-Government by destroying respect for law and making it subject to Un-Restrained Power.

☒ Subverting Our Free and Democratic Society from its Dependent Base upon the "Rule of Law".

☒ Subverting Our Republican form of Government from its Dependent Base upon the "Rule of Law".

☒ Administering Oaths without binding Consciences.

☒ Willful Misconduct in Office.

☒ Interference with Rights of Conscience.

☒ Legal Malice.

☒ Moral Turpitude.

144 . Particular Immediate Criminal Acts, or Components there-to of tort violations
continued:

☒ Fraud Pledging our bodies, labor and property a surety for the debts of the US inc in 1933 ongoing without our permission.

☒ Theft and abrogation of our lawful, constitutionally constrained judicial system through the use of the various doctrines used to Deny Due Process: Prize and Capture, Booty, Stricti Juris, quasi-public service corporations, Volenti non fit injuria, quasi-"judicial", quasi-contractus courts, Unjust Enrichment, constructive trusts, cestui qui trusts, implied trusts.

These various doctrines that appear present on various court documents appear to be wrongfully operating a denial of due process scheme and these doctrines and schemes appear to be used to unlawfully protect and conceal the ultra vires operations of the court machinery as they routinely bypass Petitioner Walter Fitzpatrick III's Constitutional protections of due process in law.

☒ Fraud for dishonest services for taking public funds and fidelity Oaths and perjuring that oath applying the above secret fraud as listed and running game on the public and our family and friends and cheating the People for unjust enrichment.

145. A right of claim in recoupment for fraud is at issue here because of Respondents' torts named herein. The hope is to bring these people to the table under a flag of peace to see how they can make Petitioner, Retired Naval Officer Walter Fitzpatrick III whole from the

1 injustice by design here and resolve to work on the bigger issues of how we can make
2 restitution happen and the Constitution a safeguard again for ours and our children's rights and
3 future again. Walter Fitzpatrick is a fair, just and righteous man, an honorable naval officer
4 who was horrified and surprised at the fraud when he learned about it just as you, the judges,
5 must be in learning about it .

6 146. The bigger issue is not Obama and the cohorts that installed him , but the
7 impending death of our great nation and the rule of law that is suppose to protect our rights and
8 that of our families, friends and fellow countryman. The Constitution and the Bill of Rights
9 can be made to work again here and in each court, one court at a time and one judge at a time.
10 Petitioner Walter Fitzpatrick doesn't want retribution. He simply wants justice and peace. The
11 People want our courts to be kept 'user friendly', constitutionally constrained, accountable for
12 any injuries and committed to keep them fair and just for all. It is unlawful to suspend the
13 protections of the Constitution.

14 IX. SUMMARY

15 147. Technical information for the Judge

16 PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

17 United States District Court	THE EASTERN DISTRICT OF TENNESSE
18 Name WALTER FITZPATRICK III	MONROE COUNTY Docket or Case No.: 11-018
19 Place of Confinement: MONROE COUNTY, TENNESSEE	
20 Prisoner No.:	
21 Petitioner: (Walter Fitzpatrick III)	
Respondent (Sherriff Bill Bivens)	
v.	
The Attorney General of the State of Tennessee	

22 PETITION

23 1. (a) Name and location of court that entered the judgment of conviction you are challenging:
24 *MONROE COUNTY COURT, TENNESSEE , Judgment for resisting arrest*

25 (b) Criminal docket or case number Case No.: *11-018*

26 2. (a) Date of the judgment of conviction (if you know):

27 (b) Date of sentencing: *Sept 23, 2011*

28 3. Length of sentence: *64 days*

4. In this case, were you convicted on more than one count or of more than one crime? *No*

1 5. Identify all crimes of which you were convicted and sentenced in this case:
2 *alleged Resisting arrest*

3 6. (a) What was your plea?

4 *No Plea was ever made. Petitioner has always asserted his innocence from the beginning,*
5 *Petitioner has always asserted that Respondents are without jurisdiction because of their*
6 *RICO criminal behavior and constitutional violations and other frauds (see info contained in*
7 *Background section) (also regarding 1933 US bankruptcy ,and Emergency Banking Relief*
8 *Act, and the War Powers Act being unlawfully used against civilians in violation of Posse*
9 *Comitatus.)*

10 (1) Not guilty . *(See above)*

11 (2) Guilty .

12 (3) Nolo contendere (no contest) .

13 (4) Insanity plea .

14 (b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or
15 charge, what did you plead guilty to and what did you plead not guilty to? *Not applicable*

16 (c) If you went to trial, what kind of trial did you have? Jury/ Judge.

17 7. Did you testify at a pretrial hearing, trial, or a post-trial hearing
18 Did you appeal from the judgment of conviction? *Yes* .

19 If you did appeal, answer the following:

20 (a) Name of court: *next higher court*

21 (b) Docket or case number: *xxxxxx*

22 (c) Result: *filed and ignored*

23 (d) Date of result

24 (e) Citation to the case

25 (f) Grounds raised: *No jurisdiction*

26 Did you seek further review by a higher state court? *Yes, by habeas corpus*

27 If yes, answer the following:

28 (1) Name of court: *Tennessee Supreme Court*

(2) Docket or case number: *Habeas Corpus Cause 11366 submitted by Next Friend*

1 (3) Result: *completely ignored/ dishonored*

2 (4) Date of result: *Nov 8, 2011 Ten days after Tennessee Supreme Court received Habeas.*
3 *Supreme court was noticed of their default and asked to vacate. They did not.*

4 (5) Citation to the case:

5
6 (6) Grounds raised: *Jurisdictional, Constitutional, due process violations and others (See*
7 *original Habeas Cause 11366 attached as Petitioner's Exhibit "1")*

8 Did you file a petition for certiorari in the United States Supreme Court? *No, not yet; trying to*
9 *resolve this matter for remedy at local and state and federal district level first.*

10 10. Other than the direct appeals listed above, have you previously filed any other petitions,
11 applications, or motions concerning this judgment of conviction in any state court? *Yes. See*
12 *original habeas Cause 11366.*

13 (6) Did you receive a hearing where evidence was given on your petition, application, or
14 motion? *No, nor even a notice in response.*

15 **X. MEMORANDUM OF LAW**

16 148. Memorandum of Law In Support of Petitioner Walter Fitzpatrick III's Habeas
17 Corpus with Points and Authorities and with Federal Questions incorporated by reference and
18 entered as a supporting attachment to Petitioner's Federal Habeas Corpus Evidence Exhibit
19 "33".

20 **MEMORANDEM OF LAW**

21 In Support of Petitioner Walter Fitzpatrick III's Habeas Corpus
22 with Points and Authorities and with Federal Questions

23 The court has a responsibility in a habeas corpus action to review the record and, if the record
24 shows a violation of a constitutional mandate, declare that the trial was absolutely void: see
25 *Moore v Dempsey*, 261 US 86; and see *Patton v US*, 281 US 276.

26 In *Hill V. U.S.* (1962) 82 S. Ct. 468, 470, 368 U.S. 424, 426, 427, the court held:

27 There are four grounds under which relief can be claimed under this statute:

28 (1) That the sentence was imposed in violation of the Constitution or laws of the U.S.;

(2) that the Court was without jurisdiction to impose such sentence

(3) that the sentence was in excess of the maximum authorized by law, and

(4) that the sentence is otherwise subject to collateral attack.

1
2 "Once jurisdiction is challenged, the court cannot proceed when it clearly appears that the court
3 lacks jurisdiction, the court has no authority to reach merits, but rather should dismiss the
4 action." Melo v. U.S. 505 F 2d 1026

5 Court must prove on the record, all jurisdiction facts related to the jurisdiction asserted.see:
6 Latana v. Hopper, 102 F. 2d 188; Chicago v. New York 37 F Supp. 150
7

8 Rule 60(b)(4) is properly invoked on the basis that the underlying judgment is void, "relief is
9 not a discretionary matter; it is mandatory." Orner v. Shalala, 30 F.3d 1307, 1310 (10th Cir.
10 1994) (quoting V.T.A., Inc. v. Airco, Inc., 597 F.2d 220, 224 n.8 (10th Cir. 1979)

11
12 A judgment is void, and therefore subject to relief under Rule 60(b)(4), court that rendered
13 judgment lacked jurisdiction or in circumstances in which the court's action amounts to a plain
14 usurpation of power constituting a violation of due process.

15 see: United States v. Boch Oldsmobile, Inc., 909 F.2d 657, 661 (1st Cir. 1990)

16 Federal question : "Does the Equal Protection Clause still limit the authority of the State?"

17 Federal question : "Do the due process clauses in the state and federal constitutions require the
18 Sessions Court to give the Appellant an opportunity to present evidence prior to issuing an
19 order"?

20 Federal question : "Can unlawful fraudulent acts committed by state predicate actors be the
21 basis for a lawful cause of action?"
22

23 The laws in this case are hereby asserted:

24 From God's word first -

25 Proverbs 14: 16 The wise are cautious and avoid danger. Fools plunge in with confidence.

26 Proverbs 14: 34 Godliness makes a nation great but sin is a disgrace to any people.

27 Proverbs 4:14 Don't do as the wicked do. Don't go that way. Turn away and keep moving.

28 "In all cases....in which a state shall be party, the Supreme Court shall have original
jurisdiction." from U. S. CONSTITUTION, ARTICLE III, SECTION 2(2).

1
2 "...all executive and judicial officers, both of the United States and of the several states, shall
3 be bound by oath or affirmation, to support this Constitution...."

4 from U. S. CONSTITUTION, ARTICLE VI, CLAUSE 3.

5 "The right of the people to be secure....against unreasonable....seizures, shall not be violated,
6 and no warrants shall issue, but upon probable cause supported by oath or affirmation.."

7 from U. S. CONSTITUTION, AMENDMENT IV.
8

9 "No person shall....be deprived of....liberty...without due process of law...."

10 from U. S. CONSTITUTION, AMENDMENT V.
11

12 "The enumeration in the Constitution, of certain rights, shall not be construed to deny or
13 disparage others retained by the people." from U. S. CONSTITUTION, AMENDMENT IX.

14 "A freeman shall only be amerced for a small offense according to the measure of that offense.
15 And none of the aforesaid fines shall be imposed save upon oath of upright men from the
16 neighborhood." from MAGNA CARTA, ARTICLE 20.
17

18 "No sheriff, constable, coroners, or other bailiffs of ours shall hold the pleas of our crown."
19 from MAGNA CARTA, ARTICLE 24.
20

21 "Henceforth the writ which is called 'Praecipe' shall not be served on any one for any holding
22 so as to cause a free man to lose his court." from MAGNA CARTA, ARTICLE 34.

23 "No freeman shall be taken, or imprisoned, or disseized, or outlawed, or exiled, or in any way
24 harmed--nor will we go upon or send upon him--save by the lawful judgment of his peers or by
25 the law of the land." from MAGNA CARTA, ARTICLE 39.
26

27 "If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the
28 free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws
of the United States, or because of his having so exercised the same;" or,

"If two or more persons go in disguise on the highway, or on the premises of another, with

1 intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured-
2 They shall be fined not more than \$10,000 or imprisoned not more than ten years, or both; and
3 if death results, they shall be subject to imprisonment for any term of years or for life." from
4 UNITED STATES CODE, TITLE 18, Section 241.

5 "Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects
6 any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or
7 immunities secured or protected by the Constitution or laws of the United States, shall be fined
8 not more than \$1,000 or imprisoned not more than one year, or both;" from UNITED
9 STATES CODE, TITLE 18, Section 242.

10
11 "The district courts shall have original jurisdiction of all civil actions arising under the
12 Constitution, laws, or treaties of the United States." from UNITED STATES CODE, TITLE
13 28, Section 1331.

14 "(a) The district courts shall have original jurisdiction of any civil action authorized by law to
15 be commenced by any person:

16 "(1) To recover damages for injury to his person or property, or because of the deprivation
17 of any right or privilege of a citizen of the United States, by any act done in furtherance of any
18 conspiracy mentioned in section 1985 of Title 42;

19 "(2) To recover damages from any person who fails to prevent or to aid in preventing any
20 wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur
21 and power to prevent;

22 "(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation,
23 custom or usage, of any right, privilege or immunity secured by the Constitution of the United
24 States or by any Act of Congress providing for equal rights of citizens or of all persons within
25 the jurisdiction of the United States."

26 from UNITED STATES CODE, TITLE 28, Section 1343.

27 "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any
28 State, subjects, or causes to be subjected, any citizen of the United States or other person
within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities
secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit
in equity, or other proper proceeding for redress." from UNITED STATES CODE, TITLE

1 42, Section 1983.

2
3 (3) If two or more persons in any State or Territory conspire or go in disguise on the highway
4 or on the premises of another, for the purpose of depriving, either directly or indirectly, any
5 person or class of persons of the equal protection of the laws, or of equal privileges and
6 immunities under the laws; in any case of conspiracy set forth in this section, if one or more
7 persons engaged therein do, or cause to be done, any act in furtherance of the object of such
8 conspiracy, whereby another is injured in his person or property, or deprived of having and
9 exercising any right or privilege of a citizen of the United States, the party so injured or
10 deprived may have an action for the recovery of damages occasioned by such injury or
11 deprivation, against any one or more of the conspirators."

12 from UNITED STATES CODE, TITLE 42, Section 1985.

13 "Every person who, having knowledge that any of the wrongs conspired to be done, and
14 mentioned in section 1985 of this title, are about to be committed, and having power to
15 prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such
16 wrongful act be committed, shall be liable to the party injured, or his legal representatives, for
17 all damages caused by such wrongful act, which such person by reasonable diligence could
18 have prevented; and such damages may be recovered in an action on the case; and any number
19 of persons guilty of such wrongful neglect or refusal may be joined as respondents in the
20 action;...." from UNITED STATES CODE, TITLE 42, Section 1986.

21 18 USC 241 and 42 USC 1983 "must be construed in pari materia." from PICKING V.
22 PENNSYLVANIA R. CO. (CCA 3) 151 F(2d) 240, rev'g 3 FedRDec 425.

23 See US v Lanier (95-1717), 520 U.S. 259 (1997) and Screws v us 325 U.S. 91 court held that
24 §242 criminal liability may be imposed when a constitutional right is said to have been
25 violated.

26
27 *"The individual may stand upon his constitutional rights as a citizen...He owes no such duty to*
28 *the state, since he receives nothing therefrom, beyond the protection of his life and property.*
His rights are such as existed by the law of the land long antecedent to the organization of the
state, and can only be taken from him by due process of law, and in accordance with the

1 *Constitution. Among his rights are a refusal to incriminate himself, and the immunity of*
2 *himself and his property from arrest or seizure except under a warrant of the law. He owes*
3 *nothing to the public so long as he does not trespass upon their rights* from HALE V.
4 HENKLE, 201 U.S. 43.

5 This applies to State Government workers and their
6 administrative agents and contractors as well.
7

8 "an...Officer who acts in violation of the Constitution ceases to represent the government."
9 from BROOKFIELD CO. V. STUART, (1964) 234 F. Supp 94, 99 (U.S.D.C., Washington,
10 D.C.)

11
12 " an officer may be held liable in damages to any person injured in consequence of a breach of
13 any of the duties connected with his office...The liability for nonfeasance, misfeasance, and for
14 malfeasance in office is in his 'individual,' not his official capacity..." from 70 AmJur2nd Sec.
15 50, VII Civil Liability.

16 "Decency, security, and liberty alike demand that government officials be subjected to the
17 same rules of conduct that are commands to the citizen. In a Government of laws, existence of
18 the government will be imperiled if it fails to observe the law scrupulously. Crime is
19 contagious. If government becomes a lawbreaker, it breeds contempt for the law..." from
20 OLMSTEAD V. U.S., 277 US 348, 485; 48 S Ct.
21 564, 575; 72 LEd 944.

22 A writ of habeas corpus is a proper remedy if petitioner has reasonable apprehension of
23 restraint of liberty by force. To justify issuance of the writ of habeas corpus, constraint need
24 not consist of actual physical force. Conduct inducing a reasonable apprehension of force may
25 be sufficient to restrain one of his/her liberty (From In re Rider (1920) 50 CalApp 797, 802,
26 195 P 965).

27
28 Constructive Custody. The availability of the writ of habeas corpus does not depend on the
actual detention of petitioner in prison. It is also available where petitioner is constructively in
custody and subject to restraint (From In re Petersen (1958) 51 Cal2d 177, 181, 331 P2d 24).

1 Additional Memoranda and Points of Law to Support Habeas Corpus Relief

2
3 THE FEDERALIST No. 83, at 499 (Alexander Hamilton) (Clinton Rossiter ed. 1961)
4 (explaining that the Constitution provided for habeas corpus as protection against “arbitrary
5 methods of prosecuting pretended offenses, and arbitrary punishment upon arbitrary
6 convictions.

7 Pursuant to *Vlandis v Kline*, 412,US 441 (1973) presumptions that prejudices any
8 constitutionally protected right is unconstitutional and may not be used in any court of law.

9
10 A “Statutory Presumption”, such as that found in 1 U.S.C. § 204 , relating to admission into
11 evidence of anything that is not positive law, may only be used against a party who is not
12 protected by the Bill of Rights.

13 The requirement of probable cause in numerous precedents, is treated as absolute.

14
15 “While warrants are not required in the requirement of all circumstances, the requirement of
16 probable cause, as elaborated in numerous precedents, is treated as absolute. The "long-
17 prevailing standards" of probable cause embodied "the best compromise that has been found
18 for accommodating [the] often opposing interests" in "safeguard[ing] citizens from rash and
19 unreasonable interferences with privacy" and in "seek[ing] to give fair leeway for enforcing the
20 law in the community's protection. see " *Brinegar v. United States*, 338 U. S. 160, 338 U. S.
21 176 (1949).

22 The standard of probable cause thus represented the accumulated wisdom of precedent and
23 experience as to the minimum justification necessary to make the kind of intrusion involved in
24 an arrest "reasonable" under the Fourth Amendment. The standard applied to all arrests....”

25 *Dunaway v. New York*, 422 U.S. 200 (1979)

26
27 Federal question: Does the Equal Protection Clause still limit the authority of a State?

28 This is what we believe the Supreme Court has said about this matter.

1 Decisions of the Supreme Court regarding federal law and the Constitution are binding on the
2 lower courts.

3
4 "The equal protection clause necessarily limits the authority of a State to draw legal lines as it
5 chooses. This authority should make it clear that retaining at least equal protection and fair
6 treatment is cognizable and substantial. Decisions of the Supreme Court regarding federal law
7 and the Constitution are binding on the lower courts. There is no room in our system for
8 departure from this principle, for it were otherwise, the law of the land would quickly lose its
9 coherence." Hutto v. Davis, 454 U.S. 370, 375 (1982)

10 Was the Petitioner denied substantive due process rights ?

11
12 Federal question: "Do the due process clauses in the state and federal constitutions require the
13 Sessions Court to give the Appellant an opportunity to present evidence prior to issuing an
14 order"?

15 We believe that the petitioner was denied substantive due process rights when the court denied
16 that petitioner could present **any** affidavits and exculpatory evidence that were crucial to his
17 case, in violation of due process and equal protection clauses of the Fourteenth Amendment,
18 and 42 USC 1983.

19
20 At trial, petitioner was denied by substantive and procedural due process right, to present
21 certain evidence that would have helped petitioner's case, and to confront his accuser even
22 though the Judge had it within his and her authority to allow said evidence. The Judge denied
23 such evidence to be provided, in violation of due process and the equal protection clauses of
24 the Fourteenth Amendment, and 42 USC 1983.

25 One of The federal court's lawful duties is to determine whether a perfunctory disposition is an
26 "unreasonable application of" Supreme Court precedent.

27
28 Federal question: "Was the state court's rejection of the constitutional claims an objectively
reasonable one in light of the facts of the case and the controlling law of the Supreme Court?"

1 "Did the Prosecuting Attorney operating under color of state laws violate petitioner's rights?"

2
3 We believe that the Judge and the Prosecuting Attorney did operate under color of state laws
4 and were in violation of petitioner's rights.

5 Every person who, under color of any statute, ordinance, regulation, custom, or usage of any
6 Statesubjects, or causes to be subjected, any citizen of the United States....to the
7 deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall
8 be liable to the party injured in an action at law, suit in equity, or other proper proceeding for
9 redress. *Mayor v. Nebraska* 928 F. 2d 1392, 1395; 1991 U.S. App. 20 Fed. R. Serv. 3d
10 (Callaghan) 214

11
12 Brady Claim:

13 *Brady v. Maryland*, 373 U.S. 83, for disclosure of all exculpatory evidence known to the
14 prosecution or in its possession.

15 From *STRICKLER V. GREENE* (98-5864) 527 U.S. 263 (1999)
16 149 F.3d 1170, affirmed.

17 There are three essential components of a true *Brady* violation:

- 18 1. the evidence at issue must be favorable to the accused, either because it is exculpatory, or
19 because it is impeaching;
20 2. that evidence must have been suppressed by the State, either willfully or inadvertently; and
21 3. prejudice must have ensued.

22 The record in this case unquestionably establishes these components.

23 To obtain relief, petitioner must convince this Court that there is a reasonable probability that
24 his conviction or sentence would have been different had the suppressed documents been
25 disclosed to the defense. The adjective is important. The question is not whether the defendant
26 would more likely than not have received a different verdict with the suppressed evidence, but
27 whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy
28 of confidence. *Kyles v. Whitley*, 514 U.S. 419, 434

Petitioner can show prejudice sufficient to excuse his procedural default.

1
2 Can a right of title or cause of action arise from fraud ?

3
4 Federal question : “Can unlawful acts committed by state predicate actors be the basis for a
5 lawful cause of action ?”

6 Regarding silent, unrevealed, adhesion, debt in assumpsit contracts regarding the nature of
7 the proceeding a quasi in rem state proceeding:
8

9 Regarding the General Sessions Courts debt in assumpsit In Rem proceeding:

10 At a minimum their memorandum must state with reasonable certainty:

- 11 (a) the identity of both contracting parties;
12 (b) the subject matter of the contract so that it can be identified either from the writing or if
13 the writing is not clear by the aid of extrinsic evidence;
14 (c) the essential terms and conditions of all the promises constituting the contract and by
15 whom and to whom the promises are made. (Rest.2d §131)

16 Supporting case law holding an agreement must not be so vague or uncertain that terms are not
17 ascertainable. *H. Liebs & Co. v. Klengenberg. C. A. Cal., 23F. 2d 611, 612.*

18 The debt in assumpsit contract claim is void in several essential ways:

19 First, consideration is defective and not lawful. Federal Reserve notes are a debauchment of
20 Gold and silver money at Art 1 sec 10.

21 See Bible regarding money/ unjust weights and measures / usury.

22 Second, their mutuality of obligation and their public policy is defective where moral turpitude
23 is not constitutional constrained, void for vagueness.

24 Third, is the party. The attorney does not appear to be the Real Party in interest with evidence
25 that he has beneficial interest as holder in due course nor has he evidenced that he has a
26 delegation of authority agreement from the Real Party in interest whether it is from the people
27 of the state of Tennessee, the creditors or the World Bank or the International Monetary Fund
28 who are the debt collectors.

Respondents have not evidenced an original wet ink signature on a contract with Petitioner's

1 name and their name on it showing any mutuality of agreement in terms between Petitioner and
2 Respondents regarding a right of subrogation or that Petitioner has agreed to allow respondents
3 an assignment or written waiver regarding claims.

4 As such, in this matter, this cannot be assumed. The Prosecutor has no lawful standing and his
5 quasi in rem claim is void on its face for irregular on its face process, an ultra vires (non
6 constitutional law form) roman civil law/ blended law and equity process with no sufficient
7 facts in evidence under sworn affidavit to support his/their (secret equity) claim(s) free from
8 fraud and material fact omissions to cede subject matter jurisdiction.

9
10 Notice to Agent is Notice to Principal. Notice to Principal is Notice to Agent.

11
12 Any presumption of conservatorship over the Petitioner, a living litagee and the executor of his
13 own estate, is terminated for cause and he, through his next friend, demands the release of
14 himself and his property immediately.

15 See TCA 20-13-101. Power to prosecute suits

16
17 The state shall commence and prosecute suits according to the laws of the land. This means
18 constrained by the Constitution and no other process.

19
20 An adversary process has as its basis presumption of innocence first, not an inquisitional
21 presumption of guilt first.

22 Was Petitioner Walter Fitzpatrick's imprisonment each time a false imprisonment after he was
23 arrested for attempting to arrest Gary Pettway and officers attempting to impede/ breach the
24 arrest of Gary Pettway (his constitutionally protected right - see TCA 40-7-109. Arrest by
25 private person Grounds)?

26 Was Petitioner Walter Fitzpatrick's imprisonment each time an obstruction of justice, a federal
27 crime for depravation of Petitioner's rights, under 1983, and 241 and 242? As corporate
28 officers of the county, the officers were armed and in breach of the statutory and moral duties
pursuant to legislative intent, a denial of Petitioner's constitutionally protected rights and
access to a Court of Record under Tennessee law pursuant to TCA 8-17-101.

1
2 Legislative intent says : “that the integrity of the processes of local government be secured and
3 protected from abuse” and where it also says “ that citizens of Tennessee are entitled to an
4 ethical, accountable and incorruptible government.”

5 The Petitioner, Lt. Commander Walter Fitzpatrick III, Ret. has suffered a number of additional
6 false arrests and deprivations of his rights by said predicate actors/officials acting criminally
7 malfeasant and malfeasant under color of law since April 1, 2010 including: assault and
8 battery; medical injury occurring during one of the arrests resulting in his ear being nearly torn
9 off; months long solitary confinements under horrific conditions; having his home broken into
10 on foundationless bench warrants; having seized his computer, belongings and personal
11 effects; and trashed his home as recently as December 7, 2011, all based on the fruit of a
12 poisonous tree evidence from the beginning .

13 To prevail under a false imprisonment claim, a petitioner must prove:

- 14 (1) willful detention;
15 (2) without consent; and
16 (3) without authority of law. (Restatement of the Law, Second, Torts)

17 Test of liability is not based on Petitioner’s guilt or innocence, but instead on the
18 reasonableness of the Respondent’s action under the circumstances.

19 Was the resultant second case, Inc. Case No. 11-018 in which Walter Fitzpatrick III, the
20 Petitioner, was sentenced and jailed derived from a fruit of a poisonous tree bench warrant
21 from the first case Inc Case No. 10-213 stemming from a failure to appear when no jurisdiction
22 was ever present in either case because the first case was the result of officer, attorney and
23 judicial malfeasance, misconduct ,moral turpitude and criminal fraudulent conduct?

24 The crime of Jury tampering is a malfeasant crime of moral turpitude intentionally and unduly
25 attempting to influence the composition and/or decisions of a jury during the course of a trial.

26
27 Jury stacking throughout the state and specifically in Monroe County appears to be a standard
28 operating practice of Martha Cook and other clerks of the court. Further evidence is available
upon grand juries request.

1 Judge and prosecutors in Monroe County, as a standard operating practice, continue to allow
2 the grand jury with jury foremen who are disqualified by exceeding legislatively imposed term
3 limits to operate and therefore corrupt any intent for clean uncorrupted process. Said Judge and
4 prosecutors in Monroe County have failed to certify the jury foreman with lawful appointing
5 orders verifying that the foremen are not disqualified by any legal disabilities/infirmities and or
6 moral turpitude. Grounds for disqualification as a certified jury foreman can include anything
7 from a rape conviction to disqualification that year because they served on the previous Jury
8 pool and exceeded legislatively imposed term limits.

9 It is wrong to reaffirm Petitioner's conviction and false and unlawful imprisonment in light of
10 the strong evidence of criminal wrongdoing, prejudice and bias by predicate actors.

11
12 "The petition here involved does not disclose whether petitioner upon his arrest was
13 immediately taken before a magistrate. It does aver that no waiver was ever made. Under such
14 circumstances the filing of a sworn complaint by an injured party free from fraud or evidence
15 free from fruit of a poisonous tree evidence was mandatory, and essential to the jurisdiction of
16 the court. Jurisdiction is fundamental. It is the primary question for determination by a court to
17 any case for jurisdiction is the power to hear and determine. [Citing cases.] If a judgment is
18 rendered by a court which did not have jurisdiction to hear a cause, such judgment is void *ab*
19 *initio*. [Citing cases.] Even though a void judgment is affirmed on appeal, it is not thereby
20 rendered valid.' (*In re Wyatt*, 114 Cal.App. 557, 559. [300 P. 132])" *Ralph v. Police Court*, 84
21 C.A.2d 257, 260.

22 A Demand to Dismiss for Illegal Grand Jury indictment in this case is at issue. This demand is
23 timely because the proper workings of the grand jury system have only recently been
24 deciphered. The time limit for demanding dismissal related to improper grand jury
25 procedure(s) resulting in indictment does not apply in this instant case, particularly when Due
26 Process Rights guaranteed by the U.S. Constitution are at issue. Even with the statutory time
27 limit, this Demand and cause of action is timely because it is being filed for habeas review as
28 soon as possible after discovery of the rules according to which a grand jury is required to
proceed. Moreover, related statutory provisions have only recently been unraveled to clarify
the grounds and the precise manner in which this Demand for a cause of action is required to
be prepared and submitted to this honorable Court. The key provision of which demonstrates

1 that Petitioner should have been notified of an investigation and proceedings, premised upon
2 allegations of a sworn complaint by an injured party, free from fraud, prior to the grand jury
3 having been convened, see: Rule 6(b)(1) of the Federal Rules of Criminal Procedure, to wit:
4 State rules of civil procedure must mandatorily be in compliance with this constitutional
5 prerequisite.

6 (1) Challenges: The attorney for the government or a defendant who has been held to answer in
7 court may challenge the array of jurors on the ground that the grand jury was not selected,
8 drawn or summoned in accordance with law, (see TCA 22-3-102. Challenge for general causes
9 of incompetency), and (see: TCA 22-3-103. Challenge for adverse interest) and may challenge
10 an individual juror on the ground that the juror is not legally qualified. Challenges shall be
11 made before the administration of the oath to the jurors and shall be tried by the court this
12 constitutionally protected right was supposed to be protected under TCA 22-3-101: Absolute
13 right of parties to examine.

14 By failing to heed Petitioner's Challenges see Petitioners Exhibit "32" properly to notify the
15 Petitioner of allegations of a sworn complaint by an injured party and intent to present matters
16 to a grand jury for Consideration, the Tennessee Attorney General effectively deprived
17 Petitioner of:

- 18 (1) The Fourth Amendment Right to have access to affidavits of complaint;
19 (2) The Sixth Amendment Right to interview and confront witnesses against him;
20 (3) The Sixth Amendment Right to have the assistance of Counsel during the proceedings;
21 and
22 (4) The Right to challenge the jury selection process and/or the qualifications of
23 individual jury candidates based on incompetency.

24 In the grand jury forum, prospective Petitioner is guaranteed constitutional rights protection as
25 articulated in Rule 5.1(a), Federal Rules of Criminal Procedure, pertaining to preliminary
26 examinations, to wit: The Petitioner /defendant may cross-examine adverse witnesses and may
27 introduce evidence. [Rule 5.1(a), Federal Rules of Criminal Procedure]

28 This Court will also please take formal Notice that the Federal Rules of Evidence, which are
otherwise restrictive, do not apply to preliminary hearings or to grand jury proceedings. See:

1 Rule 1101(d)(2) and (3), Federal Rules of Evidence. Accordingly, the applicable elements of
2 the common law and Constitutionally guaranteed rights are both preserved in these two
3 forums. According to the U.S. Supreme Court's decision in *Blair v. United States*, 250 U.S.
4 273, 282 (1919), the grand jury retains common law powers and authority vested by common
5 law of English-American lineage prior to the ratification of the U.S. Constitution.

6 The reason for the preservation of the grand jury's traditional authority, with the exclusion
7 provision at Rule 1101(d)(2), is found at 28 U.S.C. 2072, which Conveys authority for the
8 U.S. Supreme Court to promulgate rules for Statutory courts of the United States, to wit:

9 (b) Such rules shall not abridge, enlarge or modify any substantive right.

10 All laws in conflict with such rules shall be of no further force or effect after such rules
11 have taken effect.

12 Therefore, convening a grand jury in secret, without affording petitioner an opportunity to
13 challenge the jury selection process or the qualifications of the individual jurors, and to
14 exercise Fourth and Sixth Amendment Rights to have access to the substance of complaints, to
15 interview adverse witnesses, and either stand in petitioner's own stead or be represented by
16 counsel, defaults the alleged indictment into an action ultra vires ab initio (without authority
17 from the beginning). The entire grand jury array and indictment must be defaulted, therefore,
18 and the indictment vacated and dismissed, pursuant to 28 U.S.C. 867(d), to wit:

19 (d) Upon motion filed under subsection (a), (b), or (c) of this section, containing a sworn
20 statement of facts which, if true, would constitute a substantial failure to comply with
21 provisions of this title. If the court determines that there has been a substantial failure to
22 comply with the provisions of this title in selecting the grand jury, the court shall stay the
23 indictment and any resulting sentence because the grand jury was not in conformity to the
24 constitution's sixth amendment and Tennessee state law see TCA 22-3-102.

25 Challenge for general causes of incompetency, and see TCA 22-3-103.

26 Challenge for adverse interest and see: TCA 22-3-101, Absolute right of parties to examine
27 with this title. Where the instant case is concerned, the alleged indictment must be dismissed
28 because the entire selection and seating process was conducted under the exclusive control of
the Attorney General, without the Defendant having had the opportunity to participate in the
selection and qualification process, as prescribed by Rule 6(b)(1) of the Federal Rules of

1 Criminal Procedure. This, of necessity, defaults all members of the grand jury responsible for
2 the alleged indictment, because a posteriori position does not afford the opportunity to correct
3 an error which abridges the provisions of Rule 6(b)(1) of the Federal Rules of Criminal
4 Procedure.

5 Petitioner's Affidavit of Facts, will be provided as required by 28 U.S.C. 1867(d), follows the
6 PROOF OF SERVICE attending to this petition and demand.

7
8 Dismissal for Illegal Grand Jury Proceedings:

9
10 REMEDY REQUESTED

11
12 Premises considered, Petitioner / Defendant in error, through his next friend, moves this
13 honorable Court to dismiss, vacate and arrest the indictment, void judgment and sentence of
14 trial court of resisting arrest. Said arrest was based on a foundationless bench warrant from a
15 void proceeding with prejudice. Said dismissal being mandated by the operation of law.(TCA
16 40-13-210. Jurisdiction to support alleged judgment. The facts required to give the jurisdiction
shall appear on the trial).

17
18 “Any judicial record may be impeached by evidence of a want of jurisdiction in the court or
19 judicial officer, of collusion between the parties, or of fraud in the party offering the record, in
20 respect to the proceedings.”

21 Tennessee Statutes and codes

22 Title 8 - Public Officers And Employees

23 Chapter 17 - Ethical Standards for Officials and Employees

24
25 TCA 8-17-101. Legislative intent.

26 It is the intent of the general assembly that the integrity of the processes of local government be
27 secured and protected from abuse. The general assembly recognizes that holding public office
28 and public employment is a public trust and that citizens of Tennessee are entitled to an ethical,
accountable and incorruptible government.

1 [Acts 2006 (1st Ex. Sess.), ch. 1, § 49.]

2
3 What does the Bible, our heavenly Father's law say about this?

4 See Ezekiel 18:20, clause 3 - "Righteous people will be rewarded for righteous behavior and
5 the wicked people will be punished for their own wickedness."

6 Citizens may resist *unlawful* arrest to the point of taking an arresting officer's life if necessary."
7 *Plummer v. State*, 136 Ind. 306. This premise was upheld by the Supreme Court of the United
8 States in the case: *John Bad Elk v. U.S.*, 177 U.S. 529. The Court stated: "Where the officer is
9 killed in the course of the disorder which naturally accompanies an attempted arrest that is
10 resisted, the law looks with very different eyes upon the transaction, when the officer had the
11 right to make the arrest, from what it does if the officer had no right. What may be murder in
12 the first case might be nothing more than manslaughter in the other, or the facts might show
13 that no offense had been committed.

14 Federal question : Can there be a lawful sentence for resisting arrest if the arrest was made by
15 officers on unlawful grounds ?

16 An arrest made with a defective warrant, or one issued without affidavit, or one that fails to
17 allege a crime is within jurisdiction, and one who is being arrested, may resist arrest and break
18 away. If the arresting officer is killed by one who is so resisting, the killing will be no more
19 than an involuntary manslaughter." *Housh v. People*, 75 111. 491; reaffirmed and quoted in
20 *State v. Leach*, 7 Conn. 452; *State v. Gleason*, 32 Kan. 245; *Ballard v. State*, 43 Ohio 349;
21 *State v Rousseau*, 241 P. 2d 447; *State v. Spaulding*, 34 Minn. 3621.

22
23 In the Petitioner's case, the officer was not killed but was upset that Petitioner Walter
24 Fitzpatrick resisted physically and strongly to the officers unannounced, no knock, home break
25 in and filed a resisting arrest complaint against petitioner. The officers broke down Mr.
26 Fitzpatrick's door, used excessive physical force tazering him 3 times and nearly tore off his
27 ear. This offence, resisting arrest, is the offense which he is currently in jail for, even though
28 the bench warrant which the officers were acting on was inchoate, improperly served,
foundationless and retaliatory.

1 “An illegal arrest is an assault and battery. The person so attempted to be restrained of his
2 liberty has the same right to use force in defending himself as he would in repelling any other
3 assault and battery.” (*State v. Robinson*, 145 ME. 77, 72 ATL. 260).

4 “Each person has the right to resist an unlawful arrest. In such a case, the person attempting the
5 arrest stands in the position of a wrongdoer and may be resisted by the use of force, as in self-
6 defense.” (*State v. Mobley*, 240 N.C. 476, 83 S.E. 2d 100).

7
8 Tennessee Code Annotated Law (herein after denoted as TCA)

9
10 TCA 40-2-104. Commencement of prosecution.

11 A prosecution is commenced, within the meaning of this chapter, by finding an indictment or
12 presentment, the issuing of a warrant binding over the offender, by the filing of an information
13 as provided for in chapter 3 of this title, or by making an appearance in person or through
14 counsel in general sessions or any municipal court for the purpose of continuing the matter or
15 any other appearance in either court for any purpose involving the offense.

16 40-13-210. Jurisdiction to support alleged judgment.

17 The facts required to give the jurisdiction shall appear on the trial 40-13-212.

18
19 Alleging fraud.

20 (a) In all prosecutions for offenses where the fraudulent possession or concealment of the
21 thing constitutes the offense, it shall be sufficient to allege in the indictment that the party
22 charged did fraudulently keep in possession or conceal the thing, without averring the
23 particular species of fraud the party intended to commit or that any particular person was
intended to be defrauded.

24 (b) In indictments, when an intent to injure or defraud the public, and not a particular
25 individual, is required to constitute the offense, it is sufficient to allege an intent to injure or
26 defraud generally, without naming the particular person, state, government or body corporate
27 intended to be defrauded.

28 40-13-216. Alleging conspiracy.

Indictments for conspiracy framed under any of the provisions of title 39, chapter 12, part 1

1 shall not be held insufficient by reason of the general nature of the charges preferred or for
2 embracing more than one (1) of the offenses in the same indictment.

3
4 40-3-104. Actions in name of state.

5 All criminal actions are prosecuted in the name of the state of Tennessee against the party
6 charged with the offense.

7
8 40-3-102. Indictment or presentment.

9 All violations of the criminal laws may be prosecuted by indictment or presentment of a grand
10 jury, and a presentment may be made upon the information of any one (1) of the grand jury.

11 40-3-103. Information.

12 (a) All violations of the criminal laws may, with the consent of the accused and the accused's
13 attorney and of the court, be prosecuted upon the filing of an information.

14 (b) "Information" means a written statement by a district attorney general charging a person
15 with the commission of a criminal offense.

16 (c) (1) It is the mandatory duty of the court, before consenting to a prosecution by
17 information, to advise the accused in the presence of the accused's attorney of the accused's
18 constitutional right to be tried only upon presentment or indictment of the grand jury of the
19 accused's peers.

20 (2) Upon the accused's agreeing in writing in the presence of the accused's attorney to
21 waive such right, the court may proceed in all respects as in cases prosecuted by indictment or
22 presentment.

23 (3) The written waiver required in subdivision (c)(2) shall be attached to and become a
24 part of the information. SHOW PROOF PETITIONER EVER SIGNED A WAVIER ****
25 He did not

26 [Acts 1975, ch. 258, §§ 2, 3; T.C.A., §§ 40-306, 40-307.]
27

28 40-7-109. Arrest by private person Grounds.

(a) A private person may arrest another:

(1) For a public offense committed in the arresting person's presence;

(2) When the person arrested has committed a felony, although not in the arresting person's presence; or

(3) When a felony has been committed, and the arresting person has reasonable cause to believe that the person arrested committed the felony.

(b) A private person who makes an arrest of another pursuant to the provisions of §§ 40-7-109 40-7-115 shall receive no arrest fee or compensation for the arrest.

40-7-111. Arrest by private person Notice of grounds.

A private person making an arrest shall, at the time of the arrest, inform the person arrested of the cause of the arrest, except when the person is in the actual commission of the offense, or when arrested on pursuit.

40-1-106. Officials defined as magistrates.

The judges of the supreme, appellate, chancery, circuit, general sessions and juvenile courts throughout the state, judicial commissioners and county executives in those officers' respective counties, and the presiding officer of any municipal or city court within the limit of their respective corporations, are magistrates within the meaning of this title.

Title 40 - Criminal Procedure > Chapter 6 - Warrants > Part 2 - Arrest Warrants > 40-6-202 - Power of magistrates.

40-6-202. Power of magistrates.

For the apprehension of persons charged with public offenses, magistrates are authorized within their jurisdiction, to issue warrants of arrest, under the rules and regulations prescribed in this part.

40-6-203. Examination of affiant.

(a) Upon information made to any magistrate of the commission of a public offense, the magistrate shall examine, on oath, the affiant or affiants, reduce the examination to writing, and cause the examination to be signed by the person making it.

40-6-215. Summons instead of arrest warrant.

(d) By accepting the summons, the defendant agrees to appear at the sheriff's department, or other law enforcement agency in the county responsible for booking procedures, to be booked

1 and processed as directed by the sheriff's department or other responsible law enforcement
2 agency. If the defendant fails to appear for booking and processing as directed, the court shall
3 issue a bench warrant for that person's arrest. Failure to appear for booking and processing is a
4 separate criminal offense and shall be punished as provided in § 39-16-609.

5 Define who a person is; is he a man or a corporation?

6
7 40-6-208. Contents of warrant.

8 (a) The warrant should specify the name of the defendant, but if it is unknown to the
9 magistrate, the defendant may be designated in the warrant by any name.

10 (b) It should also state the offense either by name, or so that it can be clearly inferred. (c) It
11 should also show, in some part, the county in which issued, the name and initials of the
12 magistrate in office.

13 (d) The warrant shall include a copy of the affidavit of complaint.

14
15 TCA 1-3-105. Definition of terms used in code.

16 (20) Person includes a corporation, firm, company or association;

17 [Code 1858, §§ 5026, 5027; Shan., §§ 6985, 6986; Code 1932, §§ 11524, 11525;
18 T.C.A. (orig. ed.), §§ 40-708, 40-709; Acts 2003, ch. 366, § 4.]

19 (21) Personal property includes money, goods, chattels, things in action, and
20 evidences of debt;

21 (22) Personal representative," when applied to those who represent a decedent,
22 includes executors and administrators, unless the context implies heirs and distributees;

23 (23) Probate court means the court having jurisdiction over the administration of the
24 estates of decedents;

25 (24) Property includes both personal and real property;

26
27 (32) State, when applied to the different parts of the United States, includes the District of
28 Columbia and the several territories of the United States;

25-3-101. Motion by plaintiff against executive officer.

Judgment by motion may be had against any sheriff, coroner, or constable, or other executive officer, to whom an execution is directed and received by such officer for the amount due upon such execution, and twelve and one-half percent (12½%) damages, in cases when such officer:

- (1) fails to make due and proper return of such execution;
- (2) makes a false or insufficient return; or
- (3) fails to pay over money collected on such execution.

25-3-102. Motion by defendant against executive officer.

Such officers are in like manner liable to the defendant in an execution, upon motion:

(1) For the failure to pay over, on demand, any excess of money which may remain upon a sale by execution, after the satisfaction thereof, and all commissions and costs, the amount of such excess, with interest and damages; or

(2) For failing to pay over, on demand, money paid or collected on an execution, the whole or any part of which is enjoined in chancery, or to which the defendant is otherwise legally entitled, the amount so enjoined or to which the defendant is entitled, with interest and damages.

25-3-111. Judgment against clerks.

Judgment may be had summarily by motion against the clerk of any court in this state, in the following cases:

(1) For failing to pay over to the party entitled, on demand, money received by the clerk on any judgment or execution, or paid into court upon a plea of tender or any other plea, or under an order or rule of court, judgment for the sum so received, with interest, and twelve and one-half percent (12½%) damages; or

(2) For delinquencies in regard to revenue, as provided in this Code.

25-3-120. Jurisdiction of motions against attorneys.

A motion against an attorney may be made in the circuit or chancery court of any county in which such attorney resides, or in which the money was collected, and if the attorney neither resides nor practices in the state, then in the circuit court of any county, and, in the latter case, without notice.

1
2 25-3-119. Judgment against attorney.

3 (a) Judgment may, in like manner, be had in favor of the party aggrieved against any attorney,
4 upon five (5) days' notice, for any money collected or received by the attorney in that capacity,
5 and not paid over on demand by the person entitled, or that person's agent or attorney.

6 (b) Judgment shall, in such case, be given for the amount so collected or received, with
7 interest, and twelve and one-half percent (12½%) damages, and all costs.

8
9 25-3-143. Remedy cumulative.

10 The remedy by motion is cumulative, and does not deprive the plaintiff of any other action or
11 remedy allowed by law for the plaintiff's redress.

12
13 25-3-135. Parties to motions for summary judgment in general.

14 A motion may be made by the party aggrieved, or the aggrieved party's legal representatives,
15 against the person in default, and such other persons made liable with the person in default as
16 may be in existence at the time of the motion.

17 25-4-103. Judgments of general sessions courts.

18 The provisions of §§ 25-4-101 and 25-4-102 shall apply to judgments of the courts of general
19 sessions as well as to judgments of courts of record.

20
21 Is the STATE OF TENNESSEE a corporation and if so can it provide the following disclosures
22 required by law?

23 48-12-102. Charter.

24 (a) The charter must set forth:

25 (1) A corporate name for the corporation that satisfies the requirements of § 48-14-
26 101;

27 (2) The number of shares the corporation is authorized to issue;

28 (3) The street address and zip code of the corporation's initial registered office, the
county in which the office is located, and the name of its initial registered agent at that office;

- 1 (4) The name and address and zip code of each incorporator;
- 2 (5) The street address and zip code of the initial principal office of the
- 3 corporation;
- 4 (6) Information required by chapter 16 of this title; and
- 5 (7) A statement that the corporation is for profit.
- 6 (b) The charter may set forth:
- 7 (1) The names and addresses of the individuals who are to serve as the initial
- 8 directors;
- 9 (2) Provisions not inconsistent with law:
- 10 (A) Stating the purpose or purposes for which the corporation is organized;
- 11 (B) Regarding the management of the business and regulating the affairs of the
- 12 corporation; or
- 13 (C) Defining, limiting and regulating the powers and rights of the
- 14 corporation, its board of directors and shareholders;
- 15 (3) A provision eliminating or limiting the personal liability of a director to the
- 16 corporation or its shareholders for monetary damages for breach of fiduciary duty as a director;
- 17 provided, that such provision shall not eliminate or limit the liability of a director:
- 18 (A) For any breach of the director's duty of loyalty to the corporation or its
- 19 shareholders;
- 20 (B) For acts or omissions not in good faith or which involve intentional
- 21 misconduct or a knowing violation of law; or
- 22 (C) Under § 48-18-304.
- 23
- 24 No such provision shall eliminate or limit the liability of a director for any act or omission
- 25 occurring prior to the date when such provisions become effective. All references in this
- 26 subdivision to a "director" are also deemed to refer to a member of the governing body of a
- 27 corporation which dispenses with or limits the authority of the board of directors pursuant to §
- 28 48-18-101(c); and
- (4) Any provision that under chapters 11-27 of this title is required or permitted to be set forth in the bylaws.

(c) The charter need not set forth any of the corporate powers enumerated in chapters 11-27 of this title

30-3-207. Oath and bond.

(a) Every conservator, before exercising authority as conservator, shall take oath to faithfully perform the duties of conservator and to render true accounts whenever required according to law, which oath may be administered by any officer authorized to administer oaths under the laws of this state. The oath shall be filed with the court.

30-3-210. Termination of conservatorship.

(a) At any time upon petition signed by the absentee, or on petition of an attorney in fact acting under an adequate power of attorney granted by the absentee, the court shall direct the termination of the conservatorship and the transfer of all property held under the conservatorship to the absentee or to the designated attorney in fact.

Title 22 - Juries And Jurors > Chapter 3 - Examination and Challenge of Jurors

22-3-101. Absolute right of parties to examine.

Parties in civil and criminal cases or their attorneys shall have an absolute right to examine prospective jurors in such cases, notwithstanding any rule of procedure or practice of court to the contrary.

22-3-102. Challenge for general causes of incompetency.

Either party to an action may challenge for cause any person presented as a petit juror, in either a civil or criminal proceeding, who is incompetent to act as a juror under Chapter 1 of this title or who has completed a jury service term in any court of this state within the previous twenty-four (24) months.

22-3-103. Challenge for adverse interest.

Either party to an action may challenge for cause any person who has an adverse interest in a similar suit involving like questions of facts or involving the same parties.

1 20-13-101. Power to prosecute suits.

2 The state shall commence and prosecute suits according to the laws of the land, as in cases
3 between individuals, except that no security shall, in such case, be required.

4
5 Federal question: according to the following: did the State grant themselves titles of nobility,
6 make themselves above the law from suit? And if so where and what is the remedy for their
7 wrong doing? And who granted them this authority?

8
9 20-13-102. Actions against state prohibited.

10 (a) No court in the state shall have any power, jurisdiction or authority to entertain any suit
11 against the state, or against any officer of the state acting by authority of the state, with a view
12 to reach the state, its treasury, funds or property, and all such suits shall be dismissed as to the
13 state or such officers, on motion, plea or demurrer of the law officer of the state, or counsel
14 employed for the state.

15
16 20-13-103. Compromise and settlement of litigation.

17 The attorney general and reporter, with the written approval of the governor and the
18 comptroller of the treasury, may compromise and settle, insofar as the state is concerned, any
19 civil litigation to which the state may be a party, upon such terms as in their opinion may seem
20 to be in the best interest of the state, and may enter into such agreements in connection with the
21 compromise and settlement as may be necessary to effectuate the purposes of this section. The
22 written approval of the speaker of the senate and the speaker of the house of representatives
23 shall be also required for the compromise and settlement of such civil litigation to which the
24 state may be a party if the compromise and settlement will result in a significant increase in
25 state expenditures, affect the bond rating of the state or result in a decision on a policy issue
26 that may result in a significant increase in state expenditures.

27 20-11-108. General Sessions court proceedings on appeal.

28 In appeals from courts of general sessions, the circuit court shall supply any defect in the
proceedings of the inferior jurisdiction, as though the suit had been commenced in the circuit
court.

1 The word include is an expansion, and enlargement, encompasses a “statutory presumption”
2 that now puts a great deal of the code under the void for vagueness doctrine.

3 On June 30, 1864 at the end of the Civil War, the 38th Congress covertly set a plan in motion
4 to bring all states into the federal zone of the District of Columbia and reconstruct them into
5 NEW STATES and incorporation called “ In this State “. This created a shadow federal
6 Corporate monarchy resulting in a fraud built by secret treason under the fog of war, with its
7 evil, self-serving, totalitarian nature hidden from the public and doing business for its own self
8 enrichment, not to protect and maintain the rights of the American people from trespass.

9 In the years following the Civil War, their army of covert operatives, mainly agents for the
10 crown, their esquires, would slowly work in stealth within all the governmental branches to
11 fuse them under one and undermine our Constitutional Republic’s separation power through
12 checks and balances while installing their rival system one piece at a time through headless 4th
13 branch administrative agencies until, finally, only form (the name of the republic) would be left
14 but no substance. The United States, once the last great hope for freedom and prosperity, is
15 being destroyed from within because some want a little security instead of standing up against
16 the usurpers. Every judge has the individual power to uphold the dream called America, the
17 constitutionally constrained republic, with all our rights fiercely protected or conversely, to lick
18 the boots of the system who will soon grind them up into their evil life sucking system where
19 nothing is sacred or even safe. If you love your children you will make the Constitution work
20 as it was intended to or remember the 1945 photo of the little girl in bombed out Berlin. “Fraud
21 vitiates everything it touches.”

22 see *Nudd v. Burrows* (1875) 91 U.S. 416.

23 “Fraud destroys the validity of everything into which it enters.”

24 See *Boyce’s Executors v. Grundy* (1830) 28 U.S. 210.

25 “Fraud vitiates the most solemn contracts, documents and even judgments.” See *United States*
26 *v. Throckmorton* (1878) 98 U.S. 61, 70.

27 “No court in this land will allow a person to keep an advantage which he has obtained by fraud.
28 No judgment or a court, no order of a minister, can be allowed to stand if it has been obtained
by fraud. Fraud unravels everything. ...fraud vitiates all transactions, and if taken for a

1 fraudulent purpose to carry out a fraudulent scheme, such action is void and of no force or
2 effect whatever, equality will compel fair dealing, disregarding all forms and subterfuges, and
3 looking only to the substance of things.” *Jackson Law Office, P.C. v. Chappell*, 327 SW2d 15
4 at 27 citing *Libhart v. Copeland* 949 SW2d 783, 794.

5 “Extrinsic fraud usually arises when a party is denied a fair adversary hearing because he has
6 been ‘deliberately kept in ignorance of the action or proceeding, or in some other way
7 fraudulently prevented from presenting his claim or defense.’ ” *Cross v. Tustin* (1951) 37
8 Cal.2d 1067.

9 Habeas Corpus shall not be suspended.

10 The application in this case for a writ of *habeas corpus* is made to me under the 14th section of
11 the Judiciary Act of 1789, which renders effectual for the citizen the constitutional privilege of
12 the *habeas corpus*. That act gives to the Courts of the United States, as well as to each Justice
13 of the Supreme Court, and to every District Judge, power to grant writs of *habeas corpus* for
14 the purpose of an inquiry into the cause of commitment. Citing Ex Parte Merryman.

15
16 Blackstone, in his *Commentaries on the laws of England* (3d vol., 133, 134,) says:

17 "To assert an absolute exemption from imprisonment in all cases is inconsistent with every
18 idea of law and political society, and in the end would destroy all civil liberty, by rendering its
19 protection impossible."

20 1 See U.S. CONST. art. I, § 9, cl. 2 ("The privilege of the Writ of Habeas Corpus shall not be
21 suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.").

22
23 Federal question : Where is the rebellion? Where is the invasion? Where is there a public
24 safety concern?

25
26 An Evidentiary hearing must be conducted when a serious liberty and property rights are at
27 stake.

28 When serious liberty or property rights are a stake, a contested evidentiary hearing must be
conducted prior to any deprivation. *Goldberg v. Kelly*, 397 U.S. 254 (1970)

1 *Branzburg v. Hayes*, 408 U.S. 665, 686 (1972).....failure to meet the minimal requirement of
2 probable cause is an absolute bar to initiating a prosecution.

3
4 2 Act of Feb. 5, 1867, ch. 28, § 1, 14 Stat. 385; *accord Ex parte McCardle*, 73 U.S. (6Wall.)
5 318, 325-26 (1867) (proclaiming the writ a judicial remedy for “every possible case of
6 privation of liberty contrary to the Constitution, treaties, or laws).

7 3 *See, e.g.*, THE FEDERALIST No. 83, at 499 (Alexander Hamilton) (Clinton Rossiter ed.
8 1961) (explaining that the Constitution provided for habeas corpus as protection against
9 “arbitrary methods of prosecuting pretended offenses, and arbitrary punishment upon arbitrary
10 convictions”)

11
12 Is not Lt. Commander Walter Fitzpatrick’s case ripe for judicial review in light of his arbitrary
13 and capricious punishment?

14 See *Ex parte Watkins*, 28 U.S. (3 Pet.) 193, 202 (1830) (Marshall, C.J.) (stating that the writ
15 served “to liberate an individual from unlawful imprisonment”);

16
17 Is the Writ of Habeas Corpus still able to liberate a man from blatantly unlawful
18 imprisonment?

19
20 *Lindh v. Murphy*, 96 F.3d 856, 867 (7th Cir. 1996) (en banc) (“The writ known in 1789 was
21 the pre-trial contest to the executives power to hold a person captive, the device that prevents
22 arbitrary detention without trial.”), *rev’d on other grounds*, 521

23 U.S. 320 (1997); *see also* *Frank v. Mangum*, 237 U.S. 309, 330 (1915) (explaining that in 1867
24 Congress extended the privilege of the writ to “all cases of persons restrained of their liberty in
25 violation of the Constitution or a law or treaty of the United States”).

26
27 The idea reaches far back into English jurisprudence.

28 *See* DANIEL J. MEADOR, HABEAS CORPUS AND MAGNA CARTA – DUALISM.OF
POWER AND LIBERTY 25 (1966) (asserting that, by the mid-1600s, habeas corpus was “the
mode for vindicating the liberty of the subject by protecting him against confinement contrary

1 to the due process of law”) (emphasis in original); BLACKSTONE’S COMMENTARIES 131
2 (6th ed. 1774) (describing the writ as “efficacious . . . in all manners of illegal confinement”).

3
4 Is the Writ of Habeas Corpus still able to provide an effective remedy even for political
5 prisoners ?

6 *Williams*, 529 U.S. at 379 (Stevens, J., dissenting) (“A construction of AEDPA that would
7 require the federal courts to cede this authority to the courts of the States would be inconsistent
8 with the practice that federal judges have traditionally followed in discharging their duties
9 under Article III of the Constitution.”).

10
11 *See Edwards v. Carpenter*, 529 U.S. 446, 451 (2000); *Irvin v. Dowd*, 359 U.S. 394, 404 (1959)
12 (stating that state courts are obligated “equally with the courts of the Union . . . to guard,
13 enforce, and protect every right granted or secured by the Constitution of the United States”) (quoting *Robb v. Connolly*, 111 U.S. 624, 637 (1884)).
14

15 Controlling Standard AEDPA

16 1) resulted in a decision that was contrary to, or involved an unreasonable application of,
17 clearly established Federal law, as determined by the Supreme Court of the United States; and
18 (2) resulted in a decision that was based on an unreasonable determination of the facts in light
19 of the evidence presented in the State court proceeding.

20
21 Is a sentence that was derived from a case based on fruit of a poisonous tree evidence, where
22 the Petitioner was not allowed to confront his accuser, challenge the hearsay unsworn
23 documents presented by the prosecution, have lawfully sufficient evidence presented, have
24 constitutionally supported due process provided to him, a legitimate cause to continue the
25 Petitioner’s incarceration?

26 "Clearly established law" is the law in place at the time of the relevant state court merits
27 adjudication. *Greene v. Fisher*.
28

1 Verdicts that come into question because of exhaustion is a subject for de novo review: Schiro
2 v. Farley, 510 U.S. 222, 232 (1994) (“The preclusive effect of the jury’s verdict, however, is a
3 question of federal law which we must review *de novo*.”);

4 Coleman v. Thompson, 501 U.S. 722, 730 (1991) (emphasis in original). Reviewing the
5 judgment of the state court is simply the judicially proper vehicle for reviewing the
6 constitutionality of the detention.

7
8 Adjudicated on the merits means substance not form.
9

10 When Congress uses a term of art such as ‘adjudicated on the merits,’ we presume that it
11 speaks consistently with the commonly understood meaning of this term. ‘Adjudicated on the
12 merits’ has a well settled meaning: a decision finally resolving the parties’ claims, with res
13 judicata effect, that is based on the substance of the claim advanced, rather than on a
14 procedural, or other, ground. (internal citation omitted);

15 Washington v. Schriver, 255 F.3d 45, 53 (2d Cir. 2001) (*Washington II*)

16 28 U.S.C. § 636(b)(1)(A); *see also* FED. R. C IV. P. 72(a) (“The district judge . . . shall
17 consider such objections and shall modify or set aside any portion of the magistrate judge’s
18 order found to be clearly erroneous or contrary to law.”).

19
20 Prosecutor must obtain and disclose exculpatory information in the possession of another
21 sovereign.

22 Lt. Commander Walter Fitzpatrick III, Ret. is entitled, by the rules for this court, for relief from
23 the Tennessee State Court’s void judgment pursuant to federal Constitutional rules of civil
24 procedure. As such, it is right and proper to vacate void judgment and order custodian to
25 release him at once.

26
27 A judgment is void, and therefore subject to relief under Rule 60(b)(4), only if the court that
28 rendered judgment lacked jurisdiction or in circumstances in which the court’s action amounts
to a plain usurpation of power constituting a violation of due process. United States v. Boch
Oldsmobile, Inc., 909 F.2d 657, 661 (1st Cir. 1990)

1
2 Rule 60(b)(4) is properly invoked on the basis that the underlying judgment is **void**, "relief is
3 not a discretionary matter; it is mandatory." Orner v. Shalala, 30 F.3d 1307, 1310 (10th Cir.
4 1994) (quoting V.T.A., Inc. v. Airco, Inc., 597 F.2d 220, 224 n.8 (10th Cir. 1979)).

5 Judgment is a void judgment if court that rendered judgment lacked jurisdiction of the subject
6 matter, or of the parties, or acted in a manner inconsistent with due process, Fed. Rules Civ.
7 Proc., Rule 60(b)(4), 28 U.S.C.A.; U.S.C.A. Const. Amend. 5 – *Klugh v. U.S.*, 620 F.Supp. 892
8 (D.S.C. 1985).

9
10 Regarding Walter Fitzpatrick's right to arrest a tortfeasor committing a felony in front of him

11
12 District of Columbia Law 23- 582(b) reads as follows:

13 (b) A private person may arrest another -

14 (1) who he has probable cause to believe is committing in his presence -

15 (A) a felony, or

16 (B) an offense enumerated in section 23-581 (a)(2); or

17 (2) in aid of a law enforcement officer or special policeman, or other person authorized
18 by law to make an arrest.

19
20 (c) Any person making an arrest pursuant to this section shall deliver the person
21 arrested to a law enforcement officer without unreasonable delay. (July 29, 1970, 84 Stat. 630,
22 Pub. L. 91-358, Title II, 210(a); 1973 Ed., 23-582; Apr. 30, 1988, D.C. Law 7-104, 7(e), 35
23 DCR 147.)

24 In Tennessee, it has been held that a private citizen has the right to arrest when a felony has
25 been committed in his sight and he has reasonable cause to believe that the person arrested
26 committed it. Reasonable grounds will justify the arrest, whether the facts turn out to be
27 sufficient or not. (See *Wilson v. State*, 79 Tenn. 310 (1833).

28 Did the Reconstruction acts change this fact? See District of Columbia law above. It does not
appear to have changed this.

1
2 **DEFINITIONS**

3
4 *CONCEALMENT:*

5 Concealment is a term of art which includes mere nondisclosure when a party has a duty to
6 disclose. (See, e.g., *Lingsch v. Savage* (1963) 213 Cal.App.2d 729, 738; Rest.2d Torts, § 551)

7 The essential elements of a claim of fraud by concealment are:

- 8 1. The defendant must have concealed or suppressed a material fact;
9 2. The defendant must have been under a duty to disclose the fact to the plaintiff;
10 3. The defendant must have intentionally concealed or suppressed the fact with the intent to
11 defraud the plaintiff;
12 4. The plaintiff must have been unaware of the fact and would not have acted as he or she did if
13 he or she had known of the concealed or suppressed fact;
14 5. And, finally, the concealment or suppression of the fact caused the plaintiff to sustain
15 damage.

16 *NONDISCLOSURE OF KNOWN FACTS:*

17 Where material facts are known to one party and not to the other, failure to disclose them is not
18 actionable fraud unless there is some relationship between the parties which gives rise to a duty
19 to disclose such known facts.

20 A duty to disclose known facts arises where the party having knowledge of the facts is in a
21 fiduciary or a confidential relationship. A fiduciary or a confidential relationship exists
22 whenever under the circumstances trust and confidence reasonably may be and is reposed by
23 one person in the integrity and fidelity of another.

24 A duty to disclose known facts arises in the absence of a fiduciary or a confidential relationship
25 where one party knows of material facts and also knows that such facts are neither known nor
26 readily accessible to the other party.

27 Failure to disclose a negative fact where it will have a foreseeably depressing effect on income
28 expected to be generated by a business is tortious. (See Rest.2d Torts, § 551, illus. 11.)

1 *ACTIVE CONCEALMENT OF KNOWN FACTS:*

2 Intentional concealment exists where a party:

- 3 (1) Knows of defects in a property and intentionally conceals them, or
4 (2) Actively prevents investigation and discovery of material facts by the other party, or
5 (3) While under no duty to speak, nevertheless does so, but does not speak honestly or makes
6 misleading statements or suppresses facts which materially qualify those stated.

7 *ESSENTIAL ELEMENTS OF A CLAIM OF FRAUD BY A FALSE PROMISE:*

- 8 1.) The defendant must have made a promise (*like obeying the oath they took to uphold the*
9 *constitution*, emphasis mine) as to a material matter and, at the time it was made, he or she
10 must have intended not to perform it;
11 2.) The defendant must have made the promise with an intent to defraud the plaintiff, that is, he
12 or she must have made the promise for the purpose of inducing plaintiff to rely upon it and to
13 act or refrain from acting in reliance upon it;
14 3.) The plaintiff must have been unaware of the defendant's intention not to perform the
15 promise; he or she must have acted in reliance upon the promise and must have been justified
16 in relying upon the promise made by the defendant;
17 4.) And, finally, as a result of reliance upon defendant's promise, the plaintiff must have
18 sustained damage(from the Roman civil law debt in assumpsit secret equity court , secret
19 adhesions present secret liens where you are deemed guilty first and your property or freedom
20 is taken from you before sentencing unless you put up a bond/surety, this is bondage under
21 letter of Marque and reprisal, under a bill of pains and penalties also known as a court of prize
22 and capture and it is constitutionally unlawful against American citizens. It denotes a state of
23 tyranny and an ultra vires act of treason and the levying of war against a peaceful civilian
24 American people).

25 *PROOF OF INTENT NOT TO PERFORM*

26 The conduct of a party making a promise, either before or after the promise was made, may be
27 taken into consideration in determining whether there was an intention not to perform the
28 promise when made.

NEGLIGENT MISREPRESENTATION:

The essential elements of a claim of fraud by a negligent misrepresentation are:

1. The defendant must have made a representation as to a past or existing material fact;

- 1 2. The representation must have been untrue;
- 2 3. Regardless of his or her actual belief the defendant must have made the representation
- 3 without any reasonable ground for believing it to be true;
- 4 4. The representation must have been made with the intent to induce plaintiff to rely upon it;
- 5 5. The plaintiff must have been unaware of the falsity of the representation; must have acted in
- 6 reliance upon the truth of the representation and must have been justified in relying upon the
- 7 representation;
- 8 6. And, finally, as a result of the reliance upon the truth of the representation, the plaintiff must
- 9 have sustained damage. (*Gagne v. Bertran* (1954) 43 C.2d 481.)

10 *PERSONS IN/NOT IN PRIVACY WITH DEFENDANT:*

11 The misrepresentation or false promise or concealment must have been made or done with the

12 intent to induce some person or persons to act in reliance upon it and the party making the

13 representation or promise is liable only to those persons to whom the representation or promise

14 has been made from whom a material fact was concealed with such intent. If others become

15 aware of the representation or promise or are misled by the concealment and act upon such,

16 there is no liability.

17 One who makes a misrepresentation or false promise or conceals a material fact is subject to

18 liability if he or she intends or has reason to expect that the misrepresentation or false promise

19 concealment of material fact will be passed on to another person and influence such person's

20 conduct in the type of transaction involved.

21 A person has reason to expect that a misrepresentation, false promise or nondisclosure of

22 material fact will be passed on to other persons and influence that person's conduct if he or she

23 has information that would lead a reasonable person to conclude that there is a likelihood that it

24 will reach such persons and will influence them or their conduct in the type of transaction

25 involved. Subject to liability means that the defendant is liable if all of the other essential

26 elements of the claim of fraud are established.

27 One who makes a misrepresentation or false promise or conceals a material fact with the intent

28 to defraud the public or a particular class of persons is deemed to have intended to defraud

every individual in that category who is actually misled thereby.

RELIANCE:

1 A party claiming to have been defrauded by a false representation or promise must have relied
2 upon the representation or promise; that is, the representation or promise must have been a
3 cause of plaintiff's conduct in entering into the transaction and without such representation or
4 promise plaintiff would not have entered into such transaction.

5 The fraud, if any, need not be the sole cause if it appears that reliance upon the representation
6 or promise substantially influenced such party's action, even though other influences operated
as well.

7 A party claiming to have been defrauded by a false representation or promise must not only
8 have acted in reliance on it but must have been justified in such reliance, that is, the situation
9 must have been such as to make it reasonable in the light of the circumstances and plaintiff's
10 intelligence, experience and knowledge, to accept the representation or promise without
11 making an independent inquiry or investigation.

12 *EFFECT OF INDEPENDENT INVESTIGATION:*

13 If a party claiming to have been defrauded makes an independent investigation of the subject
14 matter of the alleged false representation or promise and the decision to engage in the
15 transaction is the result of his or her independent investigation and not his or her reliance upon
16 the representation or promise, he or she is not entitled to recover. (*Carpenter v. Hamilton* (1936)
17 18 Cal.App.2d 69, 75.)

18 AMENDATORY RECONSTRUCTION ACT OF MARCH 11, 1868

19 An Act to amend the Act passed March 23, 1867, entitled "An Act supplementary to 'An act to
20 provide for the more efficient government of the rebel states,' passed March 2, 1867, and to
21 facilitate their restoration. SUPPLEMENTARY RECONSTRUCTION ACT OF FORTIETH
22 CONGRESS. An Act supplementary to an act entitled: "An act to provide for the more
23 efficient government of the rebel states," passed March second, eighteen hundred and sixty-
24 seven, and to facilitate restoration." This act created the 14th amendment federal citizen under
25 section 3 of the federal constitution. All who hold public office fall under this section as
26 UNITED STATES citizens. Those who hold office have knowingly and willingly given up
27 their citizenship to this country under Title 8 Section §1481 to become a foreign state agent
under 22 USC.

28 The Oath of Office to the Constitution requires office-holders to uphold and maintain our
Constitutional form of government under the people's authority. This right was never
surrendered by the people; failure to do so violates 10 USC §333 and 18 USC §1918, chapter

1 115 §2382, §2383, §1505, §1001, §241, §242, 42 USC §1981 & 31 USC §3729 just to name a
2 few.

3 The Federal Debt Collection Procedure places all courts under equity and commerce and under
4 the International Monetary Fund. The International Monetary Fund comes under the Uniform
5 Commercial Code under banking and business interest and trust laws. This makes the Court /
6 Judges trustee over the trust and responsible whether or not the Petitioner understands the trust
7 issue. The 1933 Bankruptcy Act placed all public officials in a fiduciary position to write off
8 the public debt, since this Nation is not solvent. The TWEA suspended the U.S. Constitution in
9 the court room. This is a big fraud, and therefore, the standard American flag in the courtroom
10 was replaced with a military Admiralty flag for dealing with alien enemy residents. The people
11 never rescinded their nationality to the real United States of America. Those who hold public
12 office rescinded their nationality to become a foreign agent in order to hold public office.

13 International law and the Paris Treaty of Peace require the judge to uphold the people's
14 Constitutional form of government as defined in the "Federalist Papers".

15 Federal Rules of Civil Procedure / Rules of Civil Procedure Rule 2 only allow civil action, and
16 under Rule 17, a real party of interest has to be present in the courtroom in order for there to be
17 any claims of injury or damages against "the people." Any charges under the "UNITED
18 STATES" or "THE STATE OF....." fall under the TWEA Section.

19 The people are not subject to this jurisdiction as it is a Foreign State jurisdiction. The people
20 hold 11th Amendment immunity to claims in equity and commerce from a foreign state. The
21 courts lack jurisdiction over the Petitioner by Congressional mandate. For the aforesaid
22 reasons, the Monroe County Court lacks jurisdiction under Rule 4(j) & 12(b) (1), (2), (3), (4),
23 (5), (6) over this Petitioner.

24 If the person signing is not petitioner, state relationship to petitioner and explain why petitioner
25 is not signing this petition.

26 Petitioner is a close Friend of Lt. Commander Walter Fitzpatrick. He is unable to sign because
27 he is being held in solitary confinement and will do so in person when given the opportunity to
28 do so.

XI. AFFIDAVIT OF NEXT FRIEND MJ BLANCHARD

148. Affidavit of Petitioner's Next Friend MJ "Zeb" Blanchard regarding Habeas Corpus entered into the Court of Record into the Monroe County Court on Oct 6, 2011 under cause file # 11366 incorporated by reference and entered as a supporting attachment to petitioner's Federal Habeas Corpus, Evidence Exhibit "33".

Affirmati, non neganti incumbit probatio-the proof lies upon him who affirms, not on him who denies.

OFFICIAL NOTICE REQUESTED / JUDICIAL NOTICE REQUIRED

No authority to withhold this information from a grand Jury or Congress pursuant to Title 5 - USC - Chapter 5, sections 552 A.5 (c) (d)
Federal Rules of Evidence, which are otherwise restrictive, do not apply to a grand jury proceedings
Exclusion provision at F.R.C.P. Rule 1101(d)(2), is found at 28 U.S.C. 2072
see: United States, 250 U.S. 273, 282 (1919), the grand jury retains common law powers and authority vested by common law

Affiant's domicile is in Blairsville, Georgia. Mail receiving location for the purpose of responding to this claim is: MJ "Zeb" Blanchard c/o Document Acceptor John Neaton, on behalf of Notary Public Witness and Republic Ombudsman, 11037 Warner Ave., # 304, Fountain Valley, California 92708

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1 7. Affiant is not aware of and has not seen any competent documentary evidence from a
2 competent fact witness with firsthand knowledge, showing the respondents in State Court can
3 ever make an offer of proof that they ever had territorial nor subject matter jurisdiction over
4 petitioner in the State court hearing because no injured party, free from fraud on the court, was
5 ever produced, and Petitioner was never properly within the court's jurisdiction pursuant to 28
6 USC 2254(d)(4)). Amendment Art VI: see claims for relief.

7 8. Affiant is not aware of and has not seen any competent documentary evidence from a
8 competent fact witness with firsthand knowledge, showing that the Respondents in State Court
9 can ever make an offer of proof that Petitioner ever received a full, fair, and adequate hearing
10 in any State Court proceeding pursuant to (28 USC 2254(d)(6), Amendment Art V) See claims
11 for relief.

12 9. Affiant is not aware of and has not seen any competent documentary evidence from a
13 competent fact witness with firsthand knowledge, showing that the Respondents in State Court
14 can ever make an offer of proof that Petitioner was ever afforded due process of law, appellate
15 review, right of allocution nor a Habeas Corpus judicial review de novo in the State Court
16 proceeding pursuant to 28 USC 2254(d)(7). Amendment Art V) See claims for relief.

17 10. Affiant is not aware of and has not seen any competent documentary evidence from a
18 competent fact witness with firsthand knowledge, showing that an Original Habeas Corpus
19 under Cause Number 11366 was not in fact entered into the court record in Monroe County on
20 October 6, 2011 with the Clerk of the Court. Respondents by their acquiescence/stipulation
21 admit to Petitioner's Exhibit # 1 , and Exhibits "A"- "D" entered into evidence with the Clerk
22 of the Court . Habeas Writ was filed but no action by respondents taken. It appears that **a Fault**
23 **has occurred.**

24 11. Affiant is not aware of and has not seen any competent documentary evidence from a
25 competent fact witness with firsthand knowledge, showing that on October 12, 2011 a Notice
26 of Non Response and Dishonor to Respondents was not in fact entered into the court record at
27 Monroe County for Respondents' failure to make an answer and response in 72 hours to show
28 cause why the writ should not issue and cure the default. Respondents by their
acquiescence/stipulation admit to Petitioner's Exhibit "2", entered into evidence with the Clerk
of the Court. Notice of non response and dishonor was filed but no action taken by
Respondents. It appears that **Default and Estoppel occurred.**

12. Affiant is not aware of and has not seen any competent documentary evidence from a
competent fact witness with firsthand knowledge, showing that on October 17, 2011 a Notice

1 of Entry of Default Judgment against Respondents on Habeas Cause # 11366 was not in fact
2 entered into the court record in Monroe County. Respondents by their acquiescence/stipulation
3 admit to Petitioner's Exhibit "3" entered into evidence with the Clerk of the Court. Notice of
4 entry of Default Judgment against Respondents on Habeas Cause # 11366 was filed but no
5 action by respondents taken. It appears that **Protest and Latches occurred.**

6 13. Affiant is not aware of and has not seen any competent documentary evidence from a
7 competent fact witness with firsthand knowledge, showing that on October 24, 2011 a copy of
8 the original Habeas Cause # 11366 and Notice Regarding Default / Dishonor Regarding the
9 Matter of Habeas Corpus filed by MJ Blanchard into the Monroe County Court Record
10 regarding Cause File # 11366 Notice and Demand to Cure Default/Dishonor by Ordering the
11 Immediate and Unconditional Release of Walter Fitzpatrick III and Vacate cases # 11-018 and
12 10-213 and Void all Judgments against him was not sent from the Republic Citizens'
13 Ombudsman Michael Lerman, a private party constitutional rights advocate and fraud fighter,
14 under notary presentment to Ms. Janice Holder, et al, Chief Justice for the Tennessee Supreme
15 Court for her honor and response to cure default with ten days given to respond.

16 14. Affiant is not aware of and has not seen any competent documentary evidence from a
17 competent fact witness with firsthand knowledge, showing that Ms. Janice Holder, et al, Chief
18 Justice for the Tennessee Supreme Court is not aware of TCA 29-21-128. Re: Disobedience of
19 writ or order, TCA 29-21-115.re: Precept., what the Tennessee legislature says about this
20 matter in code and that the U. S. Supreme Court says military tribunals used to try civilians in
21 any jurisdiction where the civil courts were functioning is unconstitutional, with its decision in
22 Ex Parte Milligan, 71 U.S. 2 (1866). By rendering that decision the Supreme Court is saying
23 that it is unconstitutional to suspend Habeas Corpus while the courts are open. Respondents by
24 their acquiescence/stipulation admit to Petitioner's Exhibit "4 " sent by Certified Mail # 7009
25 0820 0002 1069 2923 with receipt of proof of service, Petitioner's Exhibit "5" that mailing was
26 sent under notary presentment and seal, Petitioner's Exhibit "6" showing proof of service,
27 Petitioner's Exhibit "7" showing mailing receipt of proof of service that documents sent, which
28 were Notice and Demand to Cure Default/Dishonor by Ordering the Immediate and
Unconditional Release of Walter Fitzpatrick III and Vacate cases # 11-018 and 10-213 and
Void all Judgments, were sent from the Republic Citizens' Ombudsman Michael Lerman to
Tennessee Supreme Court and Ms. Janice Holder, et al, Chief Justice for the Tennessee
Supreme Court and were filed but no action by Respondents taken. It appears that **unclean**

1 **hands and breach of fiduciary duty occurred: an Art 5 and Art 6 Constitutional violation**
2 **because a second default transpired and therefore Estoppel occurred.**

3 15. Affiant is not aware of and has not seen any competent documentary evidence from a
4 competent fact witness with firsthand knowledge, showing that Ms. Janice Holder, et al, Chief
5 Justice for the Tennessee Supreme Court is not aware that the burden is upon the
6 Respondent/Defendant to show that the arrest was by authority of law. See "*McAleer v. Good*,
7 *65 Atl. 934, 935 (1907)*; *Mackie v. Ambassador, 11 P.2d 6 (1932)*.

8 16. Affiant is not aware of and has not seen any competent documentary evidence from a
9 competent fact witness with firsthand knowledge, showing that after 3 days, on November 8,
10 2011 that the following documents were not filed with the Tennessee Supreme Court and Ms.
11 Janice Holder et al, Chief Justice for the Tennessee Supreme Court with grace to cure by
12 ordering Petitioner's release and immediately vacating cases 11-018 and 10-213: Notice of
13 Protest re Default re Non Response to Ombudsman Letter, a Notice and Demand to Cure
14 Default of Non Response to Habeas Corpus submitted by Next Friend MJ Blanchard to procure
15 habeas relief for Petitioner Walter Fitzpatrick III. This letter is Petitioner's Exhibit "8".
16 Petitioner's Exhibit "9" was the notary protest for their default /dishonor. Petitioner's Exhibit
17 "10", shows proof of service and Petitioner's Exhibit "11" shows the Green card receipt for
18 certified mail to Tennessee Supreme Court showing that these documents were entered into
19 evidence with the Clerk of the Court. No action by Respondents was taken. Respondents by
20 their acquiescence/stipulation admit to Petitioner's Exhibit "8". It appears that a **Felony Tort**
21 **under title 4 misprision of a felony occurred against Petitioner when they failed to release**
22 **him.**

23 17. Affiant is not aware of and has not seen any competent documentary evidence from a
24 competent fact witness with firsthand knowledge, establishing that subject matter jurisdiction
25 in Inc Case No. 11-018 and Inc Case No. 10-213 and all cases attached to this matter is or was
26 ever present pursuant to USC 40 § 255 or that the status of the affiant named herein is not that
27 of one of the Sovereign people of the Georgia Republic who's status is clarified by the
28 Supreme Court case holding in *Chisolm v. Georgia* and in 2 Corinthians 5:20 and is not a
enemy combatant subject under the T.W.E.A. found now in title 50 and 12 U.S.C. 95A & 95B,
nor legal fiction, US INC chattel slave person, vessel, in rem constructive trust, corporate
entity or any other artificially constructed en legis person fraudulent construct. Affiant reserves
all rights in commerce and wishes to compel production of documentation specific to the
establishment of the jurisdiction of the agent, principal or agency conducting any and all

1 proceeding and ascertain the evidence of constitutional oath of office, proof of bonding and
2 authority on the record of anyone representing himself or herself as a government officer or
3 agent prior to the commencement of any proceeding to avoid implications of "de facto officer
4 doctrine".

5 18. Affiant is not aware of and has not seen any competent documentary evidence from a
6 competent fact witness with firsthand knowledge, showing that a respondent surety bond and
7 lawful consideration is/or was present to bond Monroe County Tennessee Court's
8 Incorporated Case No. 11-018 and Incorporated Case No. 10-213 by the Respondents.
9 Notice: See *Dluhos v Floating Abandoned Vessel* 979 F. Supp. 138 (NDNY 1997) a vessel
10 may not be presumed to be abandoned under the substantive law of admiralty. Because Mr.
11 Dluhos (the accuser) did not post the bond required by the trial court, the court did not arrest
12 the vessel and therefore lacked jurisdiction over the vessel in rem.

13 19. Affiant is not aware of and has not seen any competent documentary evidence from a
14 competent fact witness with firsthand knowledge, showing that a SUBROGATION
15 AGREEMENT agreed to by the original creditor, original debtor and the third-party
16 attempting to collect a debt in assumpsit against Walter Fitzpatrick III exists, in fact, that
17 contains the original creditor's wet ink signature, Petitioner Walter Fitzpatrick's wet ink
18 signature and the third party debt collector's wet ink signature on the same contractual
19 agreement.

20 20. Affiant is not aware of and has not seen any competent documentary evidence from a
21 competent fact witness with firsthand knowledge, showing that any lawful Verified Claim
22 exists free from fraud and subsilencios supported by evidence that claimant can prove lawful
23 exhaustion of administrative process supported by a Notice of Fault, Default for Non-
24 Response and demands to cure said default supported by evidence of a notary certified
25 Certificate of Protest for Dishonor before bringing this matter before a Court of Record, no
26 evidence of good faith, clean hands nor fair and unbiased conduct.

27 21. Affiant is not aware of and has not seen any competent documentary evidence from a
28 competent fact witness with firsthand knowledge, showing that DEBT VALIDATION
PURSUANT TO THE FAIR DEBT COLLECTION PRACTICES ACT (15 USC §1601, ET
SEQ) was ever given. Debt or claim by entity subject by the APA must be verified by a sworn
affidavit of claim, using reliable, probative and truthful information. See Title 5 - USC -

1 Chapter 5, sections 511 definitions to see who APA applies to City, County, and Federal
2 entities and corporations using Federally issued funds are subjects of the act.

3 22. Affiant is not aware of and has not seen any competent documentary evidence from a
4 competent fact witness with firsthand knowledge, showing that the foreign *controlled and*
5 *owned Bankrupt* corporation entity known as the STATE OF TENNESSE and/ or CITY OF
6 AND/ OR COUNTY OF MONROE is not an instrumentality of THE UNITED STATES
7 Corporation formed in 1871 and incorporated in the City of London that year and registered in
8 Delaware as a for profit corporation which is acting as a commercial debt enforcement
9 arm/agent of the INTERNATIONAL MONETARY FUND and the WORLD BANK,
10 hereinafter called the BANK and the FUND, as defined in the 1944 BRETTON WOODS
11 AGREEMENT, a foreign principal power, and as such has no lawful standing to hold court
12 absent full material fact disclosure of the real creditors in interest, full disclosure of all
13 interlocking equity ties to prove there is not a commercial and constitutional conflict of interest
14 in this instant matter and that Respondents can prove they are registered as foreign principals
15 and agents as required by law.

16 23. Affiant is not aware of and has not seen any competent documentary evidence from a
17 competent fact witness with firsthand knowledge, showing that the **procedural phantom**
18 entity calling itself plaintiff and the STATE OF TENNESSE has a lawful cause of action, right
19 of action, or standing in their lower federal admiralty court and that their In This "State"
20 federal admiralty court has obtained lawful jurisdiction over the Petitioner in this matter due to
21 their failure to make an offer of proof of such and proof of bonding, oaths of offices ,original
22 contract with wet ink signature, Executor authorization agreement, evidence of mutuality of
23 agreement terms nor lawful consideration.

24 24. Affiant is not aware of and has not seen any competent documentary evidence from a
25 competent fact witness with firsthand knowledge, showing that it has not been demanded by
26 notary presentment notice that the attorneys operating on behalf of this entity calling itself the
27 State of TENNESSEE for Monroe County dispute the claims of the Petitioner's original
28 Habeas Corpus and affidavit filed under Cause # 11366 regarding the matter concerning Inc
Case No. 11-018 and Inc Case No.10-213 and prove, as is required by law, that they have a
valid cause of action, right of action, authority and standing in this court by placing their own
affidavit in rebuttal to Petitioner's claims submitted by his Next Friend on his behalf and
further prove that Inc Case No. 11-018 and Inc Case No.10-213 were ever a lawful court of
competent jurisdiction free from frauds previously formed.

1 25. Affiant is not aware of and has not seen any competent documentary evidence from a
2 competent fact witness with firsthand knowledge, showing that the Plaintiff and the State of
3 Tennessee have offered any proof that they are holders in due course with a proper cause of
4 action, right of action, standing and jurisdiction free from material omissions and fraudulent
5 inducements supported by valid contract claim and by a sworn affidavit in their full, unlimited
6 commercial liability, to date, to bring this matter before a Court of Record.

7 26. Affiant is not aware of and has not seen any competent documentary evidence from a
8 competent fact witness with firsthand knowledge, showing that the Plaintiff and the State of
9 Tennessee has offered any proof that they have filed a foreign agent registration in the matter
10 of Inc Case No. 11-018 and in the matter of Inc Case No.10-213 pursuant to FSIA and Article
11 Eleven of the Bill of Rights Amendment and the Foreign Agents Registration Act (22 USC
§612 et seq.).

12 27. Affiant is not aware of and has not seen any competent documentary evidence from a
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14 not defaulted and that the Court shall make a finding of factual innocence pursuant to
15 Tennessee code 24-5-103. Notary's Certificate as to notice of dishonor is prima facie evidence
16 because the prosecuting attorney has failed to present a lawful, verified compliant supported by
17 facts, law and evidence sufficient to support a cause of action and claim against the Petitioner
and his habeas claim under Cause # 11366, submitted by his Next Friend before the notary.

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23 Title 18 violations for fraud, RICO, piracy, inducement to slavery and are not subject to suit
24 for deprivation of rights under color of authority when and if they continue holding Petitioner
25 incarcerated after being noticed they were absent subject matter jurisdiction, proven on the
26 record, supported by sworn affidavits which were in turn supported by facts, law and evidence
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27 29. Affiant is not aware of and has not seen any competent documentary evidence from a
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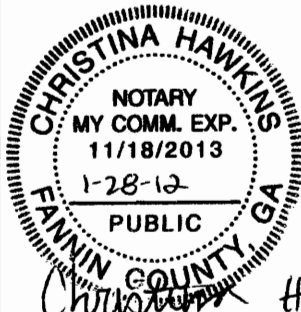
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2 title 18 violations for fraud, RICO, piracy, inducement to slavery and are not subject to suit for
3 deprivation of rights under color of authority when it was learned that they have used tricks
4 and schemes found in action by defense attorney which are constitutionally infirm and
5 inquisitional in violation of the Sixth Amendment and are a fraudulent concealment when
6 Petitioner Walter Fitzpatrick III was not informed by his attorney that when he wanted to
7 challenged the merits of the prosecution's fraudulent case with his attorney where it says in
8 TCA 40-1-109 that writing or requesting a trial upon the merits expressly waives an
9 indictment, presentment, grand jury investigation and jury trial and where it says at 40-3-103.
10 Information (2) Upon the accused's agreeing in writing in the presence of the accused's
11 attorney to waive such right, the court may proceed in all respects as in cases prosecuted by
12 indictment or presentment. The Attorney General and petitioner's Attorney used a trick artifice
13 of fraud scheme and unlawful deception built into a constitutionally infirm piece of legislation
14 that uses fraud and deceit to abridge and circumvent Petitioner's equal protection in law under
15 the constitution's Sixth Amendment rights. As such, Petitioner has been defrauded by the
16 attorneys working in conspiracy to circumvent Petitioner's constitutionally protected rights and
17 equal protection in law.

18 These are uncontested facts.

19 Affiant has read the foregoing, and Affiant knows and understands the contents therein. Affiant
20 affirms the above-stated to the best of Affiant's knowledge, understanding and beliefs and
21 submits the aforementioned on Affiant's own, unlimited commercial liability declaring by
22 affidavit that the foregoing is true, correct, complete, certain and not misleading. Affiant's
23 word is Affiant's bond. Affiant's autograph is Affiant's seal. This deed is made under
24 Necessity-of-Law in order to protect Affiant's unalienable interests from trespass and harm
25 with specific reference to Affiant's Right of Subrogation and Right of Recourse should harm
26 continue to occur to Affiant's protected rights herein.

27 Done the 28th day of the month of January in the year two thousand
28 twelve in Union County in the Georgia Republic.

All rights reserved



XII. AFFIDAVIT OF MICHAEL LERMAN

149. Affidavit of Michael Lerman the Republic Citizens' Ombudsman regarding the matter of Habeas Corpus under cause file # 11366 that was sent under notary presentment, under seal to The Tennessee Supreme Court Chief Justice Janice Holder seeking Walter Fitzpatrick's relief that was dishonored in violation of State and Federal Law incorporated by reference and entered as a supporting attachment to Petitioner's Federal Habeas Corpus, Evidence Exhibit "34".

1 7. Affiant is not aware of and has not seen any competent documentary evidence from a
2 competent fact witness with firsthand knowledge, showing the respondents in State Court can
3 ever make an offer of proof that they ever had territorial nor subject matter jurisdiction over
4 Petitioner in the State court hearing because no injured party, free from fraud on the court, was
5 ever produced, and Petitioner was never properly within the court's jurisdiction pursuant to 28
6 USC 2254(d)(4)). Amendment Art VI: see claims for relief.

7 8. Affiant is not aware of and has not seen any competent documentary evidence from a
8 competent fact witness with firsthand knowledge, showing that the Respondents in State Court
9 can ever make an offer of proof that Petitioner ever received a full, fair, and adequate hearing
10 in any State Court proceeding pursuant to (28 USC 2254(d)(6)., Amendment Art V) See claims
11 for relief.

12 9. Affiant is not aware of and has not seen any competent documentary evidence from a
13 competent fact witness with firsthand knowledge, showing that the Respondents in State Court
14 can ever make an offer of proof that Petitioner was ever afforded due process of law, appellate
15 review, right of allocution nor a Habeas Corpus judicial review de novo in the State Court
16 proceeding pursuant to 28 USC 2254(d)(7), Amendment Art V): See claims for relief.

17 10. Affiant is not aware of and has not seen any competent documentary evidence from a
18 competent fact witness with firsthand knowledge, showing that an Original Habeas Corpus
19 under Cause Number 11366 was not in fact entered into the court record in Monroe County on
20 October 6, 2011 with the Clerk of the Court. Respondents by their acquiescence/stipulation
21 admit to Petitioner's Exhibit # 1 , and Exhibits "A"- "D" entered into evidence with the Clerk
22 of the Court. Habeas Writ was filed but no action by respondents taken. It appears that **a Fault**
23 **has occurred.**

24 11. Affiant is not aware of and has not seen any competent documentary evidence from a
25 competent fact witness with firsthand knowledge, showing that on October 12, 2011 a Notice
26 of Non Response and Dishonor to Respondents was not in fact entered into the court record at
27 Monroe County for Respondents' failure to make an answer and response in 72 hours to show
28 cause why the writ should not issue and cure the default. Respondents by their
acquiescence/stipulation admit to Petitioner's Exhibit "2", entered into evidence with the Clerk
of the Court. Notice of non response and dishonor was filed but no action taken by
Respondents. It appears that **Default and Estoppel occurred.**

12. Affiant is not aware of and has not seen any competent documentary evidence from a
competent fact witness with firsthand knowledge, showing that on October 17, 2011 a Notice

1 of Entry of Default Judgment against Respondents on Habeas Cause # 11366 was not in fact
2 entered into the court record in Monroe County. Respondents by their acquiescence/stipulation
3 admit to Petitioner's Exhibit "3" entered into evidence with the Clerk of the Court. Notice of
4 entry of Default Judgment against Respondents on Habeas Cause # 11366 was filed but no
5 action by respondents taken. It appears that Protest **and Latches occurred.**

6 13. Affiant is not aware of and has not seen any competent documentary evidence from a
7 competent fact witness with firsthand knowledge, showing that on October 24, 2011 a copy of
8 the original Habeas Cause # 11366 and Notice Regarding Default / Dishonor Regarding the
9 Matter of Habeas Corpus filed by MJ Blanchard into the Monroe County Court Record
10 regarding Cause File # 11366 Notice and Demand to Cure Default/Dishonor by Ordering the
11 Immediate and Unconditional Release of Walter Fitzpatrick III and Vacate cases # 11-018 and
12 10-213 and Void all Judgments against him was not sent from the Republic Citizens'
13 Ombudsman Michael Lerman, a private party constitutional rights advocate and fraud fighter,
14 under notary presentment to Ms. Janice Holder, et al, Chief Justice for the Tennessee Supreme
15 Court for her honor and response to cure default with ten days given to respond.

16 14. Affiant is not aware of and has not seen any competent documentary evidence from a
17 competent fact witness with firsthand knowledge, showing that Ms. Janice Holder, et al, Chief
18 Justice for the Tennessee Supreme Court is not aware of TCA **29-21-128. Re: Disobedience of**
19 **writ or order, TCA 29-21-115.re: Precept.,** what the Tennessee legislature says about this
20 matter in code and that the U. S. Supreme Court says military tribunals used to try civilians in
21 any jurisdiction where the civil courts were functioning is unconstitutional, with its decision in
22 Ex Parte Milligan, 71 U.S. 2 (1866). By rendering that decision the Supreme Court is saying
23 that it is unconstitutional to suspend Habeas Corpus while the courts are open. Respondents by
24 their acquiescence/stipulation admit to Petitioner's Exhibit "4 " sent by Certified Mail # 7009
25 0820 0002 1069 2923 with receipt of proof of service, Petitioner's Exhibit " 5" that mailing
26 was sent under notary presentment and seal, Petitioner's Exhibit "6" showing proof of service,
27 Petitioner's Exhibit "7" showing mailing receipt of proof of service that documents sent, which
28 were Notice and Demand to Cure Default/Dishonor by Ordering the Immediate and
Unconditional Release of Walter Fitzpatrick III and Vacate cases # 11-018 and 10-213 and
Void all Judgments, were sent from the Republic Citizens' Ombudsman Michael Lerman to
Tennessee Supreme Court and Ms. Janice Holder, et al, Chief Justice for the Tennessee
Supreme Court and were filed but no action by Respondents taken. It appears that **unclean**

1 **hands and breach of fiduciary duty occurred - an Art 5 and Art 6 Constitutional violation**
2 **because a second default transpired and therefore Estoppel occurred.**

3 15. Affiant is not aware of and has not seen any competent documentary evidence from a
4 competent fact witness with firsthand knowledge, showing that Ms. Janice Holder, et al, Chief
5 Justice for the Tennessee Supreme Court is not aware that the burden is upon the Respondent
6 /Defendant to show that the arrest was by authority of law. See "*McAleer v. Good*, 65 Atl. 934,
7 935 (1907); *Mackie v. Ambassador*, 11 P.2d 6 (1932).

8 16. Affiant is not aware of and has not seen any competent documentary evidence from a
9 competent fact witness with firsthand knowledge, showing that after 3 days, on November 8,
10 2011 that the following documents were not filed with the Tennessee Supreme Court and Ms.
11 Janice Holder et al, Chief Justice for the Tennessee Supreme Court with grace to cure by
12 ordering Petitioner's release and immediately vacating cases 11-018 and 10-213: Notice of
13 Protest re Default re Non Response to Ombudsman Letter, a Notice and Demand to Cure
14 Default of Non Response to Habeas Corpus submitted by Next Friend MJ Blanchard to procure
15 habeas relief for Petitioner Walter Fitzpatrick III. This letter is Petitioner's Exhibit "8".
16 Petitioner's Exhibit "9" was the notary protest for their default /dishonor. Petitioner's Exhibit
17 "10", shows proof of service and Petitioner's Exhibit "11" shows the Green card receipt for
18 certified mail to Tennessee Supreme Court showing that these documents were entered into
19 evidence with the Clerk of the Court. No action by Respondents was taken. Respondents by
20 their acquiescence/stipulation admit to Petitioner's Exhibit "8". It appears that a **Felony Tort**
21 **under title 4 misprision of a felony occurred against Petitioner when they failed to release**
22 **him.**

23 17. Affiant is not aware of and has not seen any competent documentary evidence from a
24 competent fact witness with firsthand knowledge, establishing that subject matter jurisdiction
25 in Inc Case No. 11-018 and Inc Case No. 10-213 and all cases attached to this matter is or was
26 ever present pursuant to USC 40 § 255 and that the status of the affiant named herein is not that
27 of one of the Sovereign people of the California Republic who's status is clarified by the
28 Supreme Court case holding in *Chisolm v. Georgia* and in 2 Corinthians 5:20 and is not a
enemy combatant subject under the T.W.E.A. found now in title 50 and 12 U.S.C. 95A & 95B,
nor legal fiction, US INC chattel slave person, vessel, in rem constructive trust, corporate
entity or any other artificially constructed en legis person fraudulent construct. Affiant reserves
all rights in commerce and wishes to compel production of documentation specific to the
establishment of the jurisdiction of the agent, principal or agency conducting any and all

1 proceeding and ascertain the evidence of constitutional oath of office, proof of bonding and
2 authority on the record of anyone representing himself or herself as a government officer or
3 agent prior to the commencement of any proceeding to avoid implications of “de facto officer
4 doctrine”.

5 18. Affiant is not aware of and has not seen any competent documentary evidence from a
6 competent fact witness with firsthand knowledge, showing that a respondent surety bond and
7 lawful consideration is/or was present to bond Monroe County Tennessee Court’s
8 Incorporated Case No. 11-018 and Incorporated Case No. 10-213 by the Respondents. Notice:
9 See Dluhos v Floating Abandoned Vessel 979 F. Supp. 138 (NDNY 1997) a vessel may not
10 be presumed to be abandoned under the substantive law of admiralty. Because Mr. Dluhos
11 (the accuser) did not post the bond required by the trial court, the court did not arrest the
12 vessel and therefore lacked jurisdiction over the vessel in rem.

13 19. Affiant is not aware of and has not seen any competent documentary evidence from a
14 competent fact witness with firsthand knowledge, showing that a SUBROGATION
15 AGREEMENT agreed to by the original creditor, original debtor and the third-party
16 attempting to collect a debt in assumpsit against Walter Fitzpatrick III exists, in fact, that
17 contains the original creditor’s wet ink signature, Petitioner Walter Fitzpatrick ‘s wet ink
18 signature and the third party debt collector’s wet ink signature on the same contractual
19 agreement.

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24 Response and demands to cure said default supported by evidence of a notary certified
25 Certificate of Protest for Dishonor before bringing this matter before a Court of Record, no
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24. Affiant is not aware of and has not seen any competent documentary evidence from a competent fact witness with firsthand knowledge, showing that it has not been demanded by notary presentment notice that the attorneys operating on behalf of this entity calling itself the State of TENNESSEE for Monroe County dispute the claims of the Petitioner's original Habeas Corpus and affidavit filed under Cause # 11366 regarding the matter concerning Inc Case No. 11-018 and Inc Case No.10-213 and prove, as is required by law, that they have a valid cause of action, right of action, authority and standing in this court by placing their own affidavit in rebuttal to Petitioner's claims submitted by his Next Friend on his behalf and further prove that Inc Case No. 11-018 and Inc Case No.10-213 were ever a lawful court of competent jurisdiction free from frauds previously formed.

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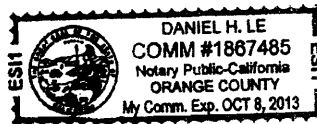
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3 **inquisitional in violation of the Sixth Amendment and are a fraudulent concealment**
4 **when Petitioner Walter Fitzpatrick III was not informed by his attorney that when he**
5 **wanted to challenged the merits of the prosecution's fraudulent case with his attorney**
6 **where it says in TCA 40-1-109 that writing or requesting a trial upon the merits expressly**
7 **40-3-103. Information (2) Upon the accused's agreeing in writing in the presence of the**
8 **accused's attorney to waive such right, the court may proceed in all respects as in cases**
9 **prosecuted by indictment or presentment. The Attorney General and petitioner's Attorney used**
10 **a trick artifice of fraud scheme and unlawful deception built into a constitutionally infirm piece**
11 **of legislation that uses fraud and deceit to abridge and circumvent Petitioner's equal protection**
12 **in law under the constitution's Sixth Amendment rights. As such, Petitioner has been**
13 **defrauded by the attorneys working in conspiracy to circumvent Petitioner's constitutionally**
14 **protected rights and equal protection in law.**

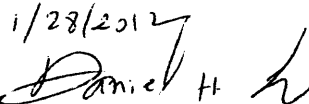
15 These are uncontested facts.

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22 with specific reference to Affiant's Right of Subrogation and Right of Recourse should harm
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24 Done the 28 day of the month of January in the year two thousand
25 twelve in Fountain Valley in the California Republic.

26  All rights reserved



1/28/2012


JURAT

State of California

County of ORANGE

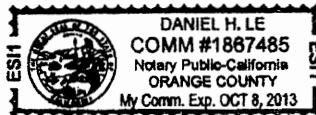
Subscribed and sworn to (or affirmed) before me on
this 28th day of January, 2012
by Michael Lerman
Name of Signer
proved to me on the basis of satisfactory evidence to
be the person (s) who appeared before me.

*Please note 3 large Stamp Certified Copies of the Same
have been made to use for Court purposes*

Affidavit of Michael Lerman

Regarding Habeas Cause # 11366

Place Notary Seal Above



Signature

Daniel H. Le
Signature of Notary Public

1 **XIII. WRIT OF MANDAMUS**

2 150. Plaintiffs seek a Writ of Mandamus, mandating that judge mandate that
3 Respondents are actually made to look at the Habeas Corpus on its merits rather than “closing”
4 or “filing” the applications “without further action” and to make an answer to counter the
5 claims or immediately, unconditionally release Petitioner Walter Fitzpatrick III and mandate
6 that all claims against him are void in this instant matter and vacate all judgments as void.

7 **XIV. DECLARATORY JUDGMENT**
8 **INDIVIDUAL ACTION**

9 151. The named Petitioner Walter Fitzpatrick III has been denied rights and privileges
10 claimed as an American inhabitant, man on the land, of the United States, within the meaning
11 of 8 U.S.C. §1503, by virtue of the previous denial of Petitioner’s Habeas Corpus for relief
12 from constitutional violations against him resulting in his injuries. Petitioner is entitled to
13 bring a declaratory judgment action, seeking a declaration that he was, indeed, denied rights
14 and privileges claimed as a national, under 8 U.S.C. §1503.

15 **XV. DECLARATORY JUDGMENTS AND CORRESPONDING**
16 **INJUNCTIVE RELIEF DEMANDED**

17 152. Petitioner herein further seeks a declaratory judgment, declaring that it violates
18 Due Process for Respondents to “close” or “file without further action,” The Habeas Corpus
19 Cause # 11366, in lieu of adjudicating such application on the merits. Petitioner also seeks
20 corresponding injunctive relief.

21 **XVI. JUDICAL REVIEW OF MONROE COUNTY COURT**
22 **AN ADVERSE AGENCY ACTION**

23 153. The named Petitioner also seeks judicial review of the final, adverse agency
24 actions, denying his Habeas Corpus under the Administrative Procedure Act (“APA”). He
25 urges that said denials are arbitrary, capricious, and contrary to law, within the meaning of the
26 APA. *See*, 5 U.S.C. §703:

27 154. Form and venue of proceeding. The form of proceeding for judicial review is the
28 special statutory review proceeding relevant to the subject matter in a Court of Record
specified by statute or, in the absence or inadequacy thereof, any applicable form of legal
action, including actions for declaratory judgments or writs of prohibitory or mandatory

1 injunction or habeas corpus, in a court of competent jurisdiction. If no special statutory review
2 proceeding is applicable, the action for judicial review may be brought against the United
3 States, the agency by its official title, or the appropriate officer. Except to the extent that prior,
4 adequate, and exclusive opportunity for judicial review is provided by law; agency action is
5 subject to judicial review in civil or criminal proceedings for judicial enforcement. *See also*, 5
6 U.S.C. § 706: Scope of review. To the extent necessary to decision and when presented, the
7 reviewing court shall decide all relevant questions of law, interpret constitutional and statutory
8 provisions, and determine the meaning or applicability of the terms of an agency action. The
9 reviewing court shall: (1) compel agency action unlawfully withheld or unreasonably delayed
10 and (2) hold unlawful and set aside agency action, findings, and conclusions found to be
11 arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law

12 **XVII. PRAYER FOR RELIEF**

13 155.WHEREFORE, Petitioner Walter Fitzpatrick III respectfully prays for relief as
14 follows:

15 1.) Order Respondents to Show Cause, within three days, why the Writ should not
16 issue in this action, pursuant to 28 U.S.C. § 2243 the Petitioner is entitled” to relief); *cf. id.* §
17 2254(b)(2) 28 U.S.C. § 2241(c) says: The writ of habeas corpus shall extend to a
18 Prisoner when he is in custody in violation of the Constitution or laws
19 28 U.S.C. § 2243 says court must “award the writ or . . . direct[] the respondent to show cause
20 why the writ should not be granted when it appears from the application that the applicant Is
21 entitled” to relief); *cf. id.* § 2254(b)(2) a petition “for a writ of habeas corpus may not be
22 denied on the merits when petitioner has shown on the record with facts, laws and evidence he
23 was unlawfully incarcerated from the beginning and has exhausted state remedies on proper
24 lawful grounds.

25 2.) Declare that Walter Fitzpatrick III’s seizure and detention without lawful presentment
26 violates the Fourth Amendment;

27 To the extent Respondents may contest any material factual allegations in this
28 Petition, schedule an evidentiary hearing in 3 days, at which the parties may adduce in support
of their allegations, and order that Walter Fitzpatrick III be made present for that hearing in
person. If they do not wish to appear before this federal court of record in front of Petitioner
and this federal judge to contest Petitioners claims asserted herein by the petition submitted on

1 behalf of the petitioner by and through his next friend supported by facts law and evidence
2 3.) Declare a default judgment award in favor of the Petitioner.

3 156. WHEREFORE YOUR PETITIONER PRAYS THIS HONORABLE COURT
4 To Declare Respondents' deliberate indifference to Petitioner's constitutionally protected
5 rights and medical condition without a tenable justification a violation of the due process
6 clause and equal protection under the law clause of the US `Constitution, Bill of Rights,
7 Federal law and State law especially at Tennessee code 8-17-101. The legislative intent is that
8 citizens of Tennessee are entitled to an ethical, accountable and incorruptible government.

8 157. Order Respondents holding Petitioner Walter Fitzpatrick III to:

- 9 • immediately release him from confinement
- 10 • return all property seized from him
- 11 • Vacate as void the sentence and judgment ordering the expunging of any and all
12 criminal records regarding Petitioner on this matter from all law enforcement databases.
- 13 • Order injunctive relief including the assignment of a court date to convene for
14 Respondents and Petitioner to attend a federally mediated settlement conference to
15 determine if an amicable settlement formula can be arrived at between the parties or if
16 referral to the Federal Grand Jury for the purposes of conducting an investigatory
17 judicial review based on petitioners tort claims is required.
- 18 • Initiate Restraining Orders against Respondents to cease abusive vexatious harassment
19 of Petitioner and vacate any and all pending proceedings
- 20 • Grant such other relief as the Court may deem fit, necessary and appropriate to protect
21 Petitioners' rights under the United States Constitution, federal statutory and regulatory
22 law, and international law, and;
- 23 • Grant Petitioner's reasonable attorneys' fees and immediate reasonable resettlement
24 costs for the destruction of Petitioner's home caused by Respondents' actions due to
25 his inability to now continue his lease from current landlord because of the destruction
26 to his home caused by Respondents.

26 Respectfully Submitted,

27 MJ " Zeb " Blanchard

28 I, the Next Friend, have personal knowledge of the matters stated herein, am over the age of
majority, and hereby asseverate as true this habeas matter, understanding the liabilities
presented in your Briscoe v LaHue, 460 US 325.

1 I, M.J. BANCHARD, hereinafter called "Affiant," comes now before all the
2 world and Affiant says to all the world the following:

3 Affiant's mailing location is: 877 WILMAR CIR. BAINSVILLE, GA 30512

4 Affiant hereafter is also called "Next Friend" in this matter.

5 Executed [Signature] (signed) on 1/28/12 (date).

6 Signature of Next Friend authorized agent on behalf of Petitioner

7 Notary Signature Christina Hawkins



1 Next Friend
2 MJ Blanchard
3 Phone #706-745-7201
4 petition on behalf of Walter Fitzpatrick III

5 **UNITED STATES DISTRICT COURT**
6 **EASTERN DISTRICT OF TENNESSEE**
7 **AT KNOXVILLE**

8 Walter Fitzpatrick III Petitioner) Case No.
9 As self in law, not a corporate entity) Judge
10 v.) Date: February __, 2012
11 Sherriff Bill Bivens) Time: 11:00 a.m.
12 Jail Custodian) Courtroom: _____

13 **ORDER**

14 It is ORDERED that the Clerk of this Court be and hereby is instructed to issue a Writ of
15 Habeas Corpus Ad Testificandum to the Sherriff Bivens /Jail Custodian/ Warden of Monroe
16 County Jail to **bring Walter Fitzpatrick III before this Court no later than 10 A.M.**
17 **February __, 2012** on at the **United States Courthouse in Knoxville, Tennessee**, then and
18 there to be sworn as a witness for the plaintiff in the above styled case. If the said Sherriff / Jail
19 Custodian/ Warden of Monroe County Jail so elects, the United States Marshal for the Eastern
20 District of Tennessee or any other duly authorized Deputy United States Marshall is authorized
21 to receive the said Walter Fitzpatrick III into possession at United States Courthouse in
22 Knoxville, Tennessee and under safe and secure conduct to have him before United States
23 District Judge at the time and place aforesaid, for the purpose aforesaid, and to return him if
24 required to the said Sherriff / Jail custodian/ Warden of Monroe County Jail under safe and
25 secure conduct at the conclusion of said hearing.

26 **ENTER.** _____
27
28